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improperly pleaded as "MetLife Disability Ins. Co.,"  
and International Business Machines Corporation,  
improperly pleaded as "IBM Corp."

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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BARBARA D. O'DONNELL,	:	
Plaintiff,	:	Civil Action No. 08-cv-1117(CLB)(GAY)
v.	:	
METLIFE DISABILITY INS. CO. and	:	
IBM CORP.	:	
Defendants.	:	

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**CIVIL ACTION – NOTICE OF MOTION TO DISMISS  
PURSUANT TO FED. R. CIV. P. 12 (b)(6)**

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**TO:** Barbara D. O'Donnell  
75 Main Street  
Otisville, New York 10983

**PLEASE TAKE NOTICE** that on at a date and time to be determined by the Court, the undersigned attorneys for defendants, Metropolitan Life Insurance Company, erroneously pleaded as "MetLife Disability Ins. Co.," (hereinafter "MetLife") and International Business Machines Corporation, erroneously pleaded as "IBM Corp.," (hereinafter "IBM") (collectively

referred to as "Defendants"), shall apply before the Honorable Charles L. Brieant, U.S.D.J., at the United States Courthouse 300 Quarropas St., Room 275 White Plains, NY 10601, for the following relief:

1. An order dismissing the Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) based on the applicable period of limitations, or, in the alternative;
2. An order dismissing the Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) based on the applicable statute of limitations, C.P.L.R. § 213.

**PLEASE TAKE FURTHER NOTICE** that in support of the within application Defendants shall rely upon the legal memorandum, certification of counsel and proposed order submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that the undersigned attorneys respectfully request oral argument if opposition is filed.

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP  
Attorneys for Defendants,  
Attorneys for Defendants,  
Metropolitan Life Insurance Company,  
improperly pleaded as "MetLife Disability Ins. Co.,"  
and International Business Machines Corporation,  
improperly pleaded as "IBM Corp."

By: /s/ Randi F. Knepper  
Randi F. Knepper

Date: June \_\_\_, 2008  
1100072\_1

**Notice To Pro Se Litigant Who Opposes a Rule 12 Motion Supported by Matters Outside the Pleadings**

The defendant in this case has moved to dismiss or for judgment on the pleadings pursuant to Rule 12(b) or 12(c) of the Federal Rules of Civil Procedure, and has submitted additional written materials. This means that the defendant has asked the court to decide this case without a trial, based on these written materials. You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION** by filing sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial. The full text of Rule 56 of the Federal Rules of Civil Procedure is attached.

In short, Rule 56 provides that you may NOT oppose the defendant's motion simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements must be in the form of affidavits. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to defendant's motion.

If you do not respond to the motion on time with affidavits or documentary evidence contradicting the facts asserted by the defendant, the court may accept defendant's factual assertions as true. Judgment may then be entered in defendant's favor without a trial.

If you have any questions, you may direct them to the Pro Se Office.

**Fed. R. Civ. P. 56:**

**(a) By a Claiming Party.**

A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after:

- (1) 20 days have passed from commencement of the action; or
- (2) the opposing party serves a motion for summary judgment.

**(b) By a Defending Party.**

A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

**(c) Serving the Motion; Proceedings.**

The motion must be served at least 10 days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

**(d) Case Not Fully Adjudicated on the Motion.**

**(1) Establishing Facts.**

If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts — including items of damages or other relief — are not genuinely at issue. The facts so specified must be treated as established in the action.

**(2) Establishing Liability.**

An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

**(e) Affidavits; Further Testimony.**

**(1) In General.**

A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

**(2) Opposing Party's Obligation to Respond.**

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

**(f) When Affidavits Are Unavailable.**

If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) deny the motion;
- (2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or
- (3) issue any other just order.

**(g) Affidavits Submitted in Bad Faith.**

If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>BARBARA D. O'DONNELL,</b>	:
Plaintiff,	:
v.	:
<b>METLIFE DISABILITY INS. CO. and</b>	:
<b>IBM CORP.</b>	:
Defendants.	:

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**CIVIL ACTION – LEGAL MEMORANDUM IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (b)(6)**

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**Randi F. Knepper,  
Of Counsel and On the Brief**

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### **PREFATORY STATEMENT**

Metropolitan Life Insurance Company, erroneously pleaded as MetLife Disability Ins. Co., (hereinafter "MetLife") and International Business Machines Corporation ("IBM") seek to dismiss the Complaint based upon the applicable periods of limitation. Plaintiff, Barbara O'Donnell ("O'Donnell") filed this action seeking relief pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001, *et seq.* (Plaintiff's Civil Cover Sheet). During her employment with IBM, O'Donnell was a participant in the IBM Long-Term Disability Plan (the "LTD Plan"). By way of Complaint, O'Donnell seeks long-term disability benefits and reimbursement of premium payments which O'Donnell alleges she would not have paid if MetLife had not terminated her long-term disability benefits. O'Donnell alleges in her Complaint that MetLife denied her claim for long-term disability benefits on July 12, 2000, approximately eight years ago. The Complaint was filed on February 4, 2008. However, O'Donnell commenced this action approximately six years after the LTD Plan's contractual period of limitations expired and approximately two years after the applicable statute of limitations expired. Accordingly, this action is clearly time barred by both the contractual and statutory periods of limitation and as such MetLife and IBM seek to dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(6).

In addition, because O'Donnell's claim for long-term disability benefits was denied, she ceased to be entitled to any and all other employee benefits. Therefore, O'Donnell's cause of action for reimbursement of premium payments which O'Donnell alleges she would not have paid if MetLife had not terminated her long-term disability benefits is also barred.

### **STATEMENT OF FACTS**

The following facts are derived solely from the Complaint and the LTD Plan. O'Donnell

asserts that she was entitled to the relief sought in the Complaint because she was allegedly disabled and, therefore, entitled to long-term disability and continuation of medical and other benefits, *see* (Complaint, ¶¶ 41-42). Pursuant to the “Legal Actions” section of the LTD Plan:

No legal action may be started to obtain benefits until 60 days after proof is given. No legal action may be started more than two years after the time proof must be given.

(Cert. of Counsel, at Ex. A, p. 11).

O’Donnell alleges in the Complaint that since November 29, 1994, she has been disabled; she submitted a claim for long-term disability benefits to MetLife; and her claim was approved in November 1995 (Complaint, ¶¶ 5, 9). O’Donnell asserts that she received correspondence from MetLife dated July 12, 2000, terminating her long-term disability benefits (Complaint, ¶ 15). Subsequently, O’Donnell asserts that she consulted with several attorneys over a period of years, (Complaint, ¶ 34), but first filed an action on February 4, 2008, approximately two years after the statute of limitations expired and six years after the LTD Plan’s limitations period expired.

O’Donnell alleges that MetLife should have continued paying her long-term disability benefits and that as a result of the July 12, 2000, claim determination she has incurred additional damages in the form of medical insurance premiums that she would not have paid had MetLife continued her long-term disability benefits (Complaint, ¶¶ 41-42). MetLife communicated its claim determination to O’Donnell by correspondence dated July 12, 2000. Therefore, that date is the latest possible date the alleged causes of action could have accrued in accordance with the applicable Second Circuit law. As such, O’Donnell’s action is time barred by the statute of limitations and the limitations period set forth in the LTD Plan.

**LEGAL ARGUMENT****POINT I****THE COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY BECAUSE THE ACTION IS TIME BARRED**

The LTD Plan that governed O'Donnell's claim for benefits contains an explicit two-year limitations period. As O'Donnell's claim was clearly denied by correspondence dated July 12, 2000, O'Donnell's Complaint has been time barred for almost six years. Therefore, it is respectfully submitted, the Complaint as a whole should be dismissed based upon the applicable limitations period.

**A. Standards Governing a Motion to Dismiss**

Pursuant to FED. R. CIV. P. 12(b)(6), a motion can be made, in lieu of filing an answer "to dismiss [the complaint] for failure of the pleading to state a claim upon which relief can be granted." In reviewing a 12(b)(6) motion, the court should accept as true all allegations in the complaint. *See, e.g., Gelb v. Board of Elections*, 88 F. Supp. 509 (S.D.N.Y. 1985). The issue before the court is whether the plaintiff can prove any set of facts consistent with his or her allegations which would entitle the plaintiff to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L.Ed.2d 59 (1984); *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957). A complaint must allege facts supporting a "claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, \_\_\_\_ U.S. \_\_\_, 127 S. Ct. 1955, 1974 (2007). If claimants "have not nudged their claim across the line from conceivable to plausible, their complaint must be dismissed." *Id.*

Although a court's review of a motion to dismiss is traditionally limited to the pleadings, the Court may consider "'documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit.'" *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153

(2d Cir. 2002) (*quoting Brass v. American Film Technologies, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993)). “Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint ‘relies heavily upon its terms and effect,’ which renders the document ‘integral’ to the complaint.” *Id.* at 153 (*quoting International Audiotext Network, Inc. v. Am. Tel. & Tel. Co.*, 62 F.3d 69, 72 (2d Cir. 1995)).

O’Donnell’s entire Complaint is dependent upon the provisions of the LTD Plan, as she seeks long-term disability benefits under the LTD Plan. Accordingly, the LTD Plan is integral to the Complaint; therefore MetLife and IBM have appropriately relied upon and included a copy of the Summary Plan Description for the LTD Plan as part of the record to support its motion to dismiss (Cert. of Counsel, Ex. A).

**B. O’Donnell’s Complaint is Time Barred Under the LTD Plan’s Two-Year Limitations Period**

The LTD Plan pursuant to which O’Donnell seeks benefits contains a two-year limitations period:

No legal action may be started to obtain benefits until 60 days after proof is given. No legal action may be started more than two years after the time proof must be given.

(Cert. of Counsel, at Ex. A, p. 11). Where, as here, a plan provides a limitations period within which a participant must bring suit, it is controlling and will be enforced. Accordingly, this action has been time barred for a period of approximately six years.

When an ERISA plan specifies a limitations period for the commencement of a legal action, the contractual period is to be enforced so long as it is not manifestly unreasonable. *Burke v. PriceWaterhouseCoopers, LLP Long Term Disability Plan*, 537 F. Supp. 2d 546, 548 (S.D.N.Y. 2008); *Manginaro v. Welfare Fund of Local 771*, 21 F. Supp. 2d 284, 306 (S.D.N.Y. 1998). Courts have routinely enforced limitations period contained within ERISA plans. The

Seventh Circuit Court of Appeals explained the reasoning behind this rule of law in Doe v. Blue Cross & Blue Shield United of Wisconsin, 112 F.3d 869 (7th Cir. 1997), as follows:

The dominant view in contract law is that contractual limitations period shorter than the statute of limitations are permissible, provided they are reasonable.... such limitations, if reasonable, are enforceable in suits under ERISA, regardless of state law...

Doe, 112 F.3d at 874-75. District courts in the Second Circuit have also enforced limitations periods in ERISA plans. In Scheirer v. NMU Pension and Welfare Plan, 585 F. Supp. 76 (S.D.N.Y. 1984), the court held that the ERISA plan's two year and ninety day limitations period applied. *See also, Yuhas v. Provident Life & Casualty Ins. Co.*, 162 F. Supp. 2d 227, 231 (S.D.N.Y. 2001) (holding "when a written agreement between the parties, such as an insurance policy, stipulates a shorter limitations period, the shorter period governs."); Lugo v. AIG Life Insurance Company, 852 F. Supp. 187 (S.D.N.Y. 1994) (shortened limitations periods in ERISA plan regulations may be prescribed); and Patterson-Priori v. Unum Life Insurance Company of America, 846 F. Supp. 1102 (E.D.N.Y. 1994) (applying the ERISA plan's shorter limitations period). Thus, the two-year limitations period contained within the LTD Plan is enforceable. Accordingly, O'Donnell's Complaint is time barred and should be dismissed.

Federal law governs the accrual of an ERISA cause of action for denial of benefits. Guilbert v. Gardner, 480 F.3d 140, 149 (2d Cir. 2007) (citations omitted). In the Second Circuit, the moment of accrual is "when there has been a repudiation by the fiduciary which is clear and made known to the beneficiaries." Patterson-Priori, 846 F. Supp. at 1106 (*citing Miles v. The New York Teamsters Conference*, 698 F.2d 593 (2d Cir), *cert. denied*, 464 U.S. 829 (1983)). In Patterson-Priori the Court held that the cause of action accrued on the date the participant was advised of the initial termination of benefits as it was the date that, as a matter of law, the defendant clearly repudiated plaintiff's right to benefits notwithstanding the fact that the plaintiff

appealed the determination and was permitted to submit additional documentation. Id. at 1108 (*citing, Larsen v. NMU Pension Trust*, 902 F.2d 1069 (2d Cir. 1990)); *see also, Dioguardi v. Rochester Laborers Pension Fund*, 317 F. Supp. 2d 216 (W.D.N.Y. 2004) and *Lewis v. John Hancock Mutual Life Ins Co.*, 6 F. Supp. 2d 244 (S.D.N.Y. 1988). With respect to the invitation to the participant to submit additional documentation, the Second Circuit held that the limitations period is not tolled during the appeal process:

Allowing a reasonable period of time to pursue one's claim through administrative channels insures to all the benefit of internal administrative dispute resolution. *Still a tenacious plaintiff should not be allowed to renew stale claims merely by requesting reconsideration of a "final" decision.... "If a Court were to rule that an applicant's cause of action is renewed each time a pension fund informally re-examines his pension request, pension funds would simply refrain from doing so."*

Id. at 1106-1107; *see also Burke*, 537 F. Supp. 2d at 548.

The foregoing reasoning is equally applicable to the matter, *sub judice*. The LTD Plan contains a two-year limitations period, which is clearly reasonable and in accordance with *Doe*, *Lugo*, *Manginaro*, and the recent decision in *Burke*. O'Donnell's cause of action accrued on July 12, 2000, the date MetLife expressly informed her that her claim for benefits was being denied. Consequently, the limitations period expired on July 12, 2002, thereby rendering O'Donnell's lawsuit time-barred by a period of almost six years prior to the suit being filed. Notably, the factual allegations of O'Donnell's Complaint admit that she had notice of MetLife's claim determination, but waited years before she took any action to assert her rights under ERISA. O'Donnell's delay resulted in the expiration of the limitations period, and accordingly, there is no set of facts upon which O'Donnell can assert a cause of action for long-term disability benefits. Furthermore, because O'Donnell's cause of action for reimbursement of insurance premiums is dependent upon her receipt of long-term disability benefits, O'Donnell cannot assert

a right to reimbursement of premium payments for medical benefits because the limitations period on her underlying long-term disability claim expired in July 2002. Therefore, the Court should grant Defendants' motion and dismiss O'Donnell's Complaint with prejudice.

**POINT II**

**THE COMPLAINT IS ALSO TIME BARRED PURSUANT  
TO THE NEW YORK STATUTE OF LIMITATIONS FOR  
BREACH OF CONTRACT**

Even if the LTD Plan did not contain an express two year limitations period, O'Donnell's Complaint would be barred by the applicable statute of limitations. As ERISA does not contain a specific statute of limitations for benefits claims, the courts apply the most analogous state law statute of limitations. *See Miles v. New York State Teamsters Conference Pension and Retirement Fund Employee Pension Benefit Plan*, 698 F.2d 593, 598 (2d Cir. 1983). Under New York law the applicable statute of limitations is six years pursuant to C.P.L.R. § 213 which states in relevant part: "The following actions must be commenced within six years: \* \* \* 2. an action upon a contractual obligation or liability, express or implied." *See also Miles*, 698 F.2d at 598 (holding that in the absence of a contractual limitations period, C.P.L.R. § 213 governs an ERISA denial of benefits claim). New York law, however, also explicitly authorizes a shorter limitations period to be "prescribed by written agreement." C.P.L.R. § 201. "[W]ritten agreement" includes employee welfare benefit plans governed by ERISA." *Manginaro*, 21 F. Supp. 2d at 293.<sup>1</sup>

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<sup>1</sup> Furthermore, under New York Insurance Law § 3221(a)(14), insurance policies are expressly permitted to provide for the two-year limitations period contained in the LTD Plan. The statute states:

That no action at law or in equity shall be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought after the expiration of two years following the time such proof of loss is required by the policy [emphasis added].

As previously set forth, O'Donnell's cause of action accrued following MetLife's July 12, 2000, correspondence terminating her claim for long-term disability benefits. Therefore, even under the longer statutory period of limitations, her causes of action would remain time barred by approximately two years. Accordingly, O'Donnell's Complaint is barred by both the applicable contractual and statutory limitations period.

**Conclusion**

For the reasons set forth above, O'Donnell has failed to state a claim upon which relief can be granted because the limitations period established in the LTD Plan expired nearly six years ago. Moreover, even in the absence of a contractual limitations period, the applicable statute of limitations expired nearly two years ago. Consequently, it is respectfully submitted that this Court grant MetLife and IBM's motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6).

**McELROY, DEUTSCH, MULVANEY &  
CARPENTER, LLP**  
Attorneys for Defendants,  
Metropolitan Life Insurance Company and  
International Business Machines Corporation

By: /s/ Randi F. Knepper  
Randi F. Knepper

Date: June 16, 2008

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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BARBARA D. O'DONNELL,	:	
Plaintiff,	:	Civil Action No. 08-cv-1117(CLB)(GAY)
v.	:	
METLIFE DISABILITY INS. CO. and	:	
IBM CORP.	:	
Defendants.	:	

---

**CIVIL ACTION – CERTIFICATION OF COUNSEL IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12 (b)(6)**

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I, Randi F. Knepper, an attorney duly licensed to practice law in the United States District Court, Southern District of New York, hereby certify as follows:

1. I am the attorney of record for Metropolitan Life Insurance Company, erroneously pleaded as "MetLife Disability Ins. Co." (hereinafter "MetLife") and International Business Machines Corporation, erroneously pleaded as "IBM Corp." (hereinafter "IBM") (collectively referred to as "Defendants"), and am a partner in the law firm of McElroy, Deutsch, Mulvaney &

Carpenter, LLP. I have been the attorney of record since the inception of this action. As such, I am fully familiar with the facts and circumstances set forth herein and I am authorized to submit this certification in support of IBM and MetLife's motion to dismiss the Complaint in this matter.

2. A true and correct copy of the Summary Plan Description for the IBM Income and Asset Protection Program is attached hereto as *Exhibit A*. Pages five through fourteen of this document contain the Summary Plan Description for the IBM Long-Term Disability Plan (the "LTD Plan").

**McELROY, DEUTSCH, MULVANEY &  
CARPENTER, LLP**  
Attorneys for Defendants,  
Metropolitan Life Insurance Company and  
International Business Machines Corporation

By: /s/ Randi F. Knepper  
Randi F. Knepper

Date: June 16, 2008

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# **EXHIBIT A**



## About Your Benefits

## Income & Asset Protection

USHR109

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Rev. 04/28/2000

This is intended to provide summary plan descriptions of certain benefits plans in which you may be eligible to participate. Complete details can be found in the official plan documents, which remain the final authority and, in the event of a conflict with this book, shall govern in all cases. Due to the ever-increasing complexity of these plans, employees should rely only on the written summary plan descriptions or formal plan documents. The Plan Administrator retains exclusive authority and discretion to interpret the terms of the benefits plans described herein.

IBM reserves the right, at its discretion, to amend, change or terminate any of its benefits plans, programs, practices or policies, as the company requires. Nothing contained in this book shall be construed as creating an express or implied obligation on the part of IBM to maintain such benefits plans, programs, practices or policies. Your benefits at or after retirement may be different from those described herein due to changes made to the IBM Personal Pension Plan or other benefit plans, or the termination of one or more benefit plans.

Because of the need for confidentiality, decisions regarding changes to IBM's benefits plans, programs, practices or policies are generally not discussed or evaluated below the highest levels of management. Managers and their representatives below such levels do not know whether IBM will or will not change or adopt, for example, any particular benefit, separation or retirement plan. Nor are they in a position to advise any employee on, or speculate about, future plans. Employees should make no assumptions about future changes or the impact changes may have on their personal situation until any such change is formally announced by IBM.

04/28/2000

This book supersedes all summary plan descriptions found in prior versions of *About Your Company*, *About Your Financial Future* and *About Your Benefits*, as well as their supplements. It provides cumulative, updated information as of April 28, 2000.

Employees with access to the HR Web on the IBM Intranet, either through a Web browser or through HRAccess on VM or CMS, should view *About Your Benefits* in the Formal HR Documents section to ensure they have the most current Summary Plan Descriptions.

## IBM Benefits Programs

The benefits programs provided to you by IBM are a key component of your total compensation and offer a broad foundation upon which you can build in providing for your needs and the well-being of your family. These programs are under continual review and are compared with those of other organizations to maintain their competitiveness and ensure they reflect your needs.

Your benefit plans provide for:

- Protection* — against major health care expenses and temporary loss of income due to sickness and accident;
- Security* — by providing retirement income, capital accumulation, disability and death benefits;
- Opportunity* — to help you balance your work and personal life through vacation and holiday plans, as well as other programs.

You can best decide how to meet your individual needs by being familiar with the coverage provided by IBM and the benefits options available to you. Then you can determine whether to supplement your coverage through IBM with additional individual coverage.

You can also help IBM in the way you use and support the company's benefits programs. For example, while you should always seek professional medical help when it is needed, you can ask questions about the treatment programs your doctor prescribes. You can also maintain a healthy lifestyle. Use pre-admission testing. Ask your doctor about generic drugs. Utilize network providers and facilities and the mail services through the IBM Managed Pharmacy Program. Look into alternative approaches to hospitalization or surgery that may be covered by our plans. It is possible to choose health care that is both medically needed and cost-effective. By containing such costs, you not only reduce your expenses but also help ensure that IBM can continue to provide benefits plans which offer security and protection for you and your family.

Unless otherwise noted, the IBM Plans described in this book pertain to all regular full-time and part-time employees of International Business Machines Corporation, or those subsidiaries of IBM authorized to participate in the Plans, regularly assigned in the United States of America, its territories and possessions and the Commonwealth of Puerto Rico. The Plans do not pertain to other categories of employees, such as supplemental employees.

Length of service, which is the basis for benefit eligibility under several of IBM's benefits plans, is determined according to the company's records and procedures. The Plan Administrator's determination of length of service shall be binding and conclusive. Certain benefit payments also may be considered income subject to taxation under federal and state laws and subject to withholding. Since tax obligations may vary depending on individual circumstances, you should secure help from a qualified tax advisor or from a government tax office if you feel that you require tax assistance.

If you have any questions about your IBM benefits plans, or the information provided above, contact the IBM Human Resources Service Center at 1-800-796-9876 (TTY: 1-800-426-6537).

### Benefits Information Provided to You by VRUs and Customer Service Representatives at the Toll-Free Numbers

The Voice Response Units (VRUs) and customer service representatives at the "800," "888" and "877" numbers established by IBM and the various contract administrators are provided as a convenience to you and your beneficiaries. While there is every intention to answer your questions accurately, responses are necessarily given in summary form and may not fully anticipate or describe all nuances surrounding each question. Errors due to miscommunication by either party or other causes are also possible. In any event, neither the VRUs nor the customer service representatives are authorized to give you binding advice.

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All details furnished by the VRUs or customer service representatives, including eligibility for benefits, must necessarily be governed by the availability of correct personnel data and the provisions contained in *About Your Benefits* and other Plan documents, as they might be amended and in effect on the date for which benefit coverage is sought. Plan documents, insurance policies, IBM's corrected records, other controlling documents or the applicable law will control in the event of any conflict between the terms of the Plans and the information provided by the VRUs or customer service representatives.

Before calling a customer service center or making a decision based on information you receive from the VRUs or customer service representatives, you should review *About Your Benefits*, your employment records and other Plan documents which are available on request. You may request written information from the Office of the Plan Administrator, IBM Human Resources Service Center, 3808 Six Forks Road, Raleigh, NC 27609.

If you make a claim for benefits to the Plan Administrator based on what you believe you were told by one of the customer service areas, the Plan Administrator will consider your report along with all other pertinent information.

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## How to Print this Document

### *To Print from the Web (e.g., Netscape or WebExplorer)*

- 1 While in this document, select the BookManager printer icon which can be found at the top of the document panel on the BookManager action bar (this icon not to be confused with the separate print icon found on the web browser's action bar).
- 2 The "IBM BookManager Print Preview" screen displays.
- 3 At the "Select Topics" window you can choose the topics you want to print by holding down the CTRL key to highlight multiple topics. Or, to print the entire book, scroll to the bottom of the panel and select the "All Topics" box next to Preview:
- 4 After selecting the topics to print, click on Preview "Selected Topics" at the bottom of the panel
- 5 The "IBM BookManager Preview" screen will display your document ready to print.
- 6 From this "Print Preview" screen, select your web browser print function on the browser action bar to print out your hardcopy
- 7 Close the browser screen that opened for printing, if necessary.

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## IBM Sickness and Accident Income Plan

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### Summary

The IBM Sickness and Accident (S&A) Income Plan provides continuation of your regular salary when you are absent due to illness or injury. You are eligible for this Plan from the first day of employment.

The Plan provides:

Regular salary\*<sup>1</sup> (minus Workers' Compensation wage payments and/or Social Security Disability Income [SSDI] payments) for each day you are absent, up to a maximum of 52 weeks (2,080 hours) in a period of 24 consecutive months.

---

### What is Covered

If you are unable to work because you are sick or have an accident, your salary will be provided by the IBM Sickness and Accident Income Plan which covers regular employees starting on the first day of employment. "Unable to work" means unable to perform the duties of the job you held at the time of your sickness or accident, or the duties of any other job that IBM determines that you are capable of performing.

While you are employed, and beginning with the first regular workday of reported absence, this Plan will provide you with your regular salary for each day absent up to a maximum of 52 weeks (2,080 hours) in a period of 24 consecutive months. All payments cease on termination of employment. If, for any reason, you receive an overpayment of S&A benefits, this overpayment must be repaid to IBM.

Sickness and Accident benefits will not be payable for an illness which can be treated or corrected (in the opinion of OHS or the physicians selected by IBM) through customary and accepted medical services, where you refuse to follow the corrective regimen which IBM determines you are reasonably able to follow, in order to correct or limit the illness or disability.

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### How the Plan Works

If you are absent typically for more than three consecutive workdays, you must, upon request by IBM Occupational Health Services or your manager, submit a certificate of disability from your treating physician to be eligible for any further benefits for that particular absence. The certificate your treating physician submits must be a completed Medical Treatment Report (MTR) or equivalent. Based on individual circumstances, managers may request a complete MTR or equivalent for every absence regardless of its duration. Failure to provide a complete MTR or equivalent medical documentation to OHS within the time set by the Company will result in the discontinuance of S&A benefits and can be grounds for management disciplinary action, including termination.

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<sup>1</sup> \*Regular salary is defined as regular monthly compensation for regularly scheduled hours, not over 40 hours a week. For employees under commission or incentive plans, "regular monthly compensation" is defined as the average of base compensation and commission payments paid during the full 36 calendar months preceding the month in which the last day worked occurs or, if greater, the current salary equivalent. If the employee has not been under a commission or incentive plan for a full 36 months, the actual number of months will be used. For executive employees, "regular monthly compensation" is defined as base salary only. The terms of the Executive Annual Incentive Program govern eligibility for annual incentive when an executive employee is eligible for benefits under this plan.

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While you are recovering from an illness or injury, you must advise your manager in advance if you will be away from your place of residence for more than five consecutive days and provide a telephone number where you can be reached.

Whether you are at home or elsewhere, you must report to IBM either in person, by phone or by letter at least once a week. In addition, to continue receiving S&A Income payments, you must, when requested, furnish a physician's statement (MTR or equivalent) indicating the reasons that continued absence is necessary and provide medical justification acceptable to IBM.

IBM in deciding whether or not you are entitled to benefits, may require an examination by a physician of the company's choice. All IBM determinations regarding your eligibility for benefits are final.

## **Coordination of Benefits with Workers' Compensation and/or Social Security Disability Income (SSDI) Payments**

If your absence is caused by sickness or accident which entitles you to Workers' Compensation and/or Social Security Disability Income (SSDI) payments, only the difference between S&A income and the Workers' Compensation and/or SSDI payments will be allowed. (You should apply for SSDI after five months of continued S&A absence.) If you receive Workers' Compensation and/or SSDI payments for days you received S&A payments, you must reimburse IBM for the S&A amount that was duplicated by Workers' Compensation or SSDI.

## **Return to Work**

Where your position is held open by IBM during the time you are receiving Sickness and Accident Income benefits, you will be placed back at that position upon your return to work provided you were continuously employed by IBM during this period and are certified, if required, by IBM Occupational Health Services as still able to perform the essential functions of the position (with or without such reasonable accommodations as you request, if any).

However, in some cases, particularly those involving a lengthy illness, IBM may decide, for business reasons, to fill your position during the time you are receiving Sickness and Accident Income benefits, or when you are able to perform the essential functions of your current position. In such cases, IBM will make a reasonable effort to place you in a comparable position at or about the time you are ready to return to work. If such an effort does not produce a match, or if IBM determines that you are unable to perform the essential functions of such a position (with or without such reasonable accommodations as you request, if any), IBM will use reasonable efforts to locate another position for you which IBM considers the best available job/skill match for you in IBM at that time. Although IBM might consider positions in other locations and in other business units, IBM may choose to limit its search for a position for you to your currently assigned location and/or your currently assigned business unit. In the event a return offer is made which would be to a position at a location not near your currently assigned location, IBM, at its discretion and depending upon distances as well as other factors, may offer some form of IBM relocation assistance then in effect. Furthermore, the return offer could involve, among other things, a downleveling, a shift change, a career change, and/or a salary reduction. In determining the availability of positions at the time of the expiration of your Sickness and Accident Income benefits, IBM will neither create positions not needed by IBM nor create vacancies by removing other regular employees from their positions. If a position is not available, IBM, at its discretion, may terminate your employment, except if and as precluded by law.

In the event IBM or your business unit conducts an involuntary reduction in force while you are receiving Sickness and Accident Income benefits and eliminates existing positions due to work elimination, staff reduction or restructuring, IBM reserves the right (except to the extent, if any, precluded by law), to terminate your employment in accordance with the terms of the reduction in force. In determining surplus, the criteria that would be applied in your case would be of the same type of criteria applied in the case of actively working employees otherwise similarly situated. IBM Sickness and Accident Income Plan benefits do not continue beyond termination of employment.

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If IBM OHS determines that your condition allows you to return to work, but does not allow you to return to full-time regular status within a reasonable point in time, IBM will convert your status to part-time regular if a part-time regular position for which you are qualified exists. If a position is not available, IBM at its discretion, may terminate your employment except if and as precluded by law. In the alternative, you may be considered for a personal leave of absence. If IBM OHS determines that the employee's condition allows the employee to return to full-time regular status within a reasonable point in time, S&A payments will end at that time and the employee must return to a regular full-time work schedule. IBM's determination regarding what is a reasonable point in time and whether you are qualified for an available position is final.

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## **IBM Regular Part-time Employee Sickness and Accident Income Plan**

The general provisions and benefits previously described in this section also apply to regular part-time employees.

Sickness and Accident Income benefit hours will be adjusted accordingly for part-time employees and employees who convert from full-time to part-time employment. The adjustment will be based on scheduled work hours and any S&A usage prior to the conversion.

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Employees working in California and New Jersey should consult a special addendum for details unique to their state. The California and New Jersey addenda are available on the IBM Intranet in the Resource Center section of the HR Web Home Page at <http://w3.ibm.com/hr/>

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## IBM Long-Term Disability Plan

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### Summary

Under the Long-Term Disability Plan, you are eligible for a monthly income benefit, subject to the limitations and conditions of the Plan, if you are totally disabled and have completed the waiting period.

The Long-Term Disability Plan provides 66 2/3 percent of regular monthly compensation reduced by payments from certain other sources (see "Coordination with Other Sources of Payment" on page 8), with a minimum monthly benefit of \$100.

You submit your application for Long-Term Disability benefits directly to Metropolitan Life Insurance Company.

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### Who is Eligible

The Long-Term Disability Plan covers employees who:

- are regular or regular part-time employees of IBM or a participating domestic, wholly owned subsidiary of IBM; *and*
- are in active status or are on an approved leave of absence (other than a military leave of absence or any pre-retirement bridge leave of absence in which the employee commits to retire at or before the scheduled end of the leave); *and*
- are regularly assigned in the United States of America, its territories or possessions, or the Commonwealth of Puerto Rico

The Long-Term Disability Plan is in effect for you starting January 1, 1993, or (if later) your first day of such employment, except if you have an application pending for benefits under the IBM Medical Disability Income Plan or are entitled to receive, currently or in the future, benefits under the IBM Medical Disability Income Plan.

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### What the Plan Provides

- Beginning on the day after the expiration of your waiting period or the last day salary continuance was paid, whichever is later, and while you remain totally disabled, but not beyond the end of the month of the disability benefit period which applies to you, you will receive a monthly Long-Term Disability benefit of 66 2/3 percent of your regular monthly compensation

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### How the Plan Works

#### Definition of Totally Disabled

Under the Long-Term Disability Plan, totally disabled means that during the first 12 months after you complete the waiting period, you cannot perform the important duties of your regular occupation with IBM because of a sickness or injury. After expiration of that 12 month period, totally disabled means that, because of a sickness or injury, you cannot perform the important duties of your occupation or of any other gainful occupation for which you are reasonably fit by your education, training or experience. You must be under the appropriate care and treatment of a doctor on a continuing basis. At your own expense, proof of disability, satisfactory to Metropolitan, must be sub-

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mitted to Metropolitan. "Your regular occupation with IBM" means the regular occupation you had with IBM as of your last day of active status.

"Appropriate Care and Treatment" means medical care and treatment that meet all of the following:

1. It is received from a Doctor whose medical training and clinical experience are suitable for treating your Disability;
2. It is necessary to meet your basic health needs and is of demonstrable medical value;
3. It is consistent in type, frequency and duration of treatment with relevant guidelines of national medical, research and health care coverage organization and governmental agencies;
4. It is consistent with the diagnosis of your condition; and
5. Its purpose is maximizing your medical improvement

"Doctor" means a person who: (i) is legally licensed to practice medicine; and (ii) is not related to you. A licensed medical practitioner will be considered a Doctor:

1. if applicable state law requires that such practitioners be recognized for the purposes of certification of disability; and
2. the care and treatment provided by the practitioner is within the scope of his or her license.

For all covered persons, except those who are on a leave of absence, the waiting period means:

A. A total of 52 weeks of your regularly scheduled IBM work time that falls within a continuous 24 months during which you are totally disabled and eligible to receive benefits under the IBM Sickness and Accident Income Plan.

For covered employees on an approved leave of absence, the waiting period means:

B. A continuous period of 12 months in which you are totally disabled and that starts with a day on which you are on an approved leave of absence from IBM and during which you remain on approved leave of absence or you become eligible to receive benefits under the IBM Sickness and Accident Income Plan. If you become eligible for any other group long term disability coverage after the first day of your total disability, you cannot complete the waiting period under this provision B.

## **Regular Monthly Compensation**

Your regular monthly compensation is your salary based on your regularly scheduled hours, not exceeding 40 hours a week. For employees under commission or incentive plans, regular monthly compensation means the average of your base compensation and commission payments paid during the 36 full calendar months preceding the month in which your last day worked occurs or, if greater, the current salary equivalent. If you have not been under a commission or incentive plan for a full 36 months, the actual number of months will be used. The amount of your Long-Term Disability benefit is determined by your last regular monthly compensation amount as of the date you are entitled to first receive benefits under this Plan.

## **Disability Benefit Period**

The disability benefit period applicable to you while you are totally disabled and the Plan is in force is determined in accordance with the following table:

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Your Age When the Long-Term Disability Benefit Period Begins	Disability Benefit Period
Prior to age 60	To age 65
On or after age 60	5 years

## What Is Not Covered

Long-Term Disability benefits will not be payable for a total disability caused by:

1. Active participation in a riot.
2. Active participation in a war or any warlike action in time of peace.
3. Committing or trying to commit a felony

In addition, no Long-Term Disability benefits will be payable:

1. For any period of total disability for which you are entitled to receive benefits under the IBM Medical Disability Income Plan.
2. For a disability which starts within the first 12 months that you are covered under the Long-Term Disability Plan and which is caused by a pre-existing condition. Pre-existing condition means a sickness or physical condition for which, in the 3 months immediately before you become covered under the Long-Term Disability Plan,
  - a. symptoms existed which would ordinarily cause a person to seek diagnosis, care or treatment; or
  - b. medical advice or treatment, including prescribed drugs or medicines, was provided to you by a doctor.

This pre-existing condition limitation will not apply to an employee who was employed by IBM before January 1, 1992 and remained continuously employed by IBM after that date. It also will not apply to an employee who:

- a. was one of a group of individuals hired into IBM from another company in connection with an outsourcing group, merger or acquisition; and
  - b. as an employee of that company, was continuously covered, during the last 90 days of his or her employment with that company (or for the entire term of such employment, if less), under one or (concurrently or consecutively) multiple public or private group disability plans — other than Workers' Compensation plans and the Social Security Disability Income Plan — under which the maximum benefit period was no less than 52 weeks; and
  - c. as an employee of IBM, has been continuously covered, throughout the term of such employment, under one or (concurrently or consecutively) multiple public or private group disability plans — other than Workers' Compensation plans and the Social Security Disability Income Plan — under which the maximum benefit period was less than 52 weeks
3. Monthly benefit payments will cease on the date you refuse to participate in a Rehabilitation Program in which Metropolitan determines you are able to participate.

"Rehabilitation Program" means:

- a. a return to active employment by you on either a part-time or full-time basis in an attempt to enable you to resume gainful employment or service in an occupation for which you are reasonably qualified, taking into account your training, education, experience and past earnings; or
- b. participating in vocational training or physical therapy. This must be deemed by one of Metropolitan's rehabilitation coordinators to be appropriate.

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- 4. If you fail to submit satisfactory proof at your expense to Metropolitan, when requested, that your total disability still exists, Metropolitan will have the right, while you are receiving Long-Term Disability benefits, to have you examined, at Metropolitan's expense, by doctors of Metropolitan's choice when and as often as Metropolitan reasonably chooses.
- 5. For any period of time during which you are engaged in employment for wage or profit, except the first 24 months of employment which results in rehabilitation earnings. Rehabilitation earnings may be extended beyond 24 months when deemed appropriate by Metropolitan
- 6. Monthly benefits are not payable for any period of your disability while you are confined in any penal or correctional institute.

## Coordination with Other Sources of Payment

Eligibility for payment of Social Security Disability Income benefits, or disability benefits under the laws of any state, does not guarantee you benefits under the Long-Term Disability Plan

The benefits payable under the Long-Term Disability Plan will be reduced by:

the actual or estimated primary Social Security Disability Income benefits which you are (or upon making timely and proper request and submitting due proof, would be) entitled to by reason of your disability (see note below regarding Social Security offsets). Any further increase in the level of Social Security benefits which becomes effective after you are first entitled to receive Social Security benefits will not reduce your monthly Long-Term Disability payment

any benefits you are entitled to receive under any Workers' Compensation law, occupational disease law, or insurance or other arrangement established to conform to any state or other governmental disability benefits law.

any benefits you are entitled to receive for loss of earnings or their equivalent under any insurance or other plan pursuant to a motor vehicle No-Fault Law. However, your Long-Term Disability benefit will not be reduced by benefits under a No-Fault Law if the No-Fault Law requires that Long-Term Disability benefits be paid first.

50 percent of your rehabilitation earnings. After the 24 month period described above, your monthly benefit will be reduced by 100 percent of your earnings while disabled. Rehabilitation earnings mean your wages or profits from employment that Metropolitan accepts as being designed to rehabilitate you during a period of disability. Your Long-Term Disability benefit will be further reduced by any amount by which 100 percent of your rehabilitation earnings plus any Social Security Disability Income benefits, Workers' Compensation payment or any other type of disability payment exceeds 100 percent of your highest regular monthly compensation in the 3 years prior to the expiration of the IBM Sickness and Accident Income Plan benefit

the amount of any defined benefit pension plan benefits of IBM and its subsidiaries, that you have elected to receive under the IBM Retirement Plan (prior plan) or IBM Personal Pension Plan, as applicable, as described in the Plans.

any separation allowance, special separation program payment or other severance payment or separation incentive payment which you are granted or are entitled to receive because of retirement, separation or the start of a pre-retirement bridge leave of absence. "Pre-retirement bridge leave of absence" means any leave of absence during which you will become eligible to retire and for which you must commit, in advance, to retire at or before the scheduled end of the leave of absence.

However, your Long-Term Disability benefit amount will never be less than \$100.

**Note: Social Security Offsets**

Your monthly benefit will NOT be reduced by estimated Social Security disability benefits if:

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- 1 You provide proof that you have applied for Social Security disability benefits;
2. You have signed the Reimbursement Agreement which confirms that you will repay all overpayments that are due to the IBM Long-Term Disability Plan and the IBM Sickness and Accident Plan. Arrangements have been made with Metropolitan Life Insurance Company to assist in the recovery of Social Security disability benefits for the IBM Long-Term Disability Plan and the IBM Sickness and Accident Plan; and
- 3 You have signed the form authorizing the Social Security Administration to release information on awards directly to Metropolitan.

In any case, when you do receive approval or final denial of your claim from the Social Security Administration:

1. Your Long-Term Disability monthly benefit will be adjusted to offset the amount of your Social Security monthly benefit; and
- 2 You must promptly refund to Metropolitan an amount equal to all overpayments due the IBM Long-Term Disability Plan and the IBM Sickness and Accident Plan. If you do not promptly make such refund to Metropolitan, Metropolitan may reduce or offset against any future Long-Term Disability benefits payable to you. This includes the minimum benefit.

## Awards

You must submit prompt notice and written proof to Metropolitan of any award, including any retroactive award, settlement, compromise, or other determination which results in payment or entitlement to any amounts derived from primary Social Security Disability Income benefits, Workers' Compensation payments, any other disability payments or rehabilitation earnings or earnings replacement benefits.

For any retroactive award other than benefits under the IBM Medical Disability Income Plan, Metropolitan will then compute the amounts of your future Long-Term Disability benefits and the amount of any adjusted monthly benefits, for the period already paid or credited to you before Metropolitan received notice and proof of your retroactive award. The adjusted monthly benefit amount means the difference between:

- the amount of monthly Long-Term Disability benefits already paid or credited to you for that period of disability, and
- the amount by which those monthly Long-Term Disability benefits would have been reduced had the retroactive award been taken into account when Metropolitan computed the Long-Term Disability benefits for that period of disability

If Metropolitan notifies you that the amount of adjusted monthly benefits is less than the amount of monthly Long-Term Disability benefits already paid or credited to you, then you must promptly refund the difference.

If you do not promptly refund the required amount, Metropolitan may, in addition to other rights Metropolitan may have, reduce the amount of any future benefits payable under this Plan (including the \$100 minimum benefit) by the amount of the refund.

If you are entitled to additional benefits due to an underpayment, Metropolitan will pay you the additional amount in a lump sum.

If you are retroactively approved for benefits under the IBM Medical Disability Income Plan, you are not entitled to Long-Term Disability benefits. You are required to refund to Metropolitan any Long-Term Disability benefits you received for the period of disability for which you received benefits under the IBM Medical Disability Income Plan.

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## Return to Work

In the event of a remission or a recovery from your disability, you must contact the Metropolitan Life Insurance Company and the IBM human resources department at your last place of employment. You also must contact the IBM human resources department and your local Occupational Health Services (OHS) department if you wish to be considered for return to active employment after receiving Long-Term disability benefits.

If you are approved for return to work, IBM will attempt to place you in a position that will use your previous experience and education. However, no commitment can be made as to whether any positions for which you qualify will be available, or to the responsibilities or location of any such positions.

In the event that you again become actively employed with IBM after having received benefits under the Long-Term Disability Plan and you subsequently become disabled again, eligibility for further disability benefits will depend on the nature of the later disability and the period of elapsed time from the original disability. Specifically, if the later disability is due to the same or related cause or causes as the original disability and occurs within 90 days following your return to active work, such disability will be considered a continuation of the previous disability.

## Taxation of Benefits

Long-Term Disability benefits are subject to federal income tax reporting and withholding requirements. Shortly after the end of each calendar year, you will be issued a W-2 form showing the taxable disability benefits paid to you and the amount of taxes withheld. State income tax laws vary and benefits will be reported to state tax authorities where required.

## How to File a Claim

The forms necessary to file a claim for Long-Term Disability benefits under this Plan may be obtained from IBM line managers or area/site personnel, or directly from Metropolitan, who will also be ready to answer questions about those benefits and to assist you in filing claims.

The instructions included in the claim package should be followed carefully. This will expedite the processing of the claim. Be sure all questions are answered fully.

The Statement of Employee form is to be completed by you. Have your doctor complete the Statement of Attending Physician form and return it to you. Send these and other applicable forms to Metropolitan at the address shown on the claim package.

Send the Statement of Employer - Application for Long-Term Disability Benefits to your line manager at IBM for completion, who will then forward the form to Metropolitan. When the claim has been processed, you will receive written notification of the benefits payable. If any benefits have been denied, you will receive a written explanation.

## Notice and Proof of a Claim

In order for your Long-Term Disability benefits to begin on a timely basis, written notice of injury or sickness on which a claim may be based should, if possible, be given to Metropolitan 3 months prior to the date you would be entitled to first receive Long-Term Disability benefits. In no case should this notice be given any later than 12 months after the date you would be entitled to first receive Long-Term Disability benefits.

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Proof of such injury or sickness should, if possible, be provided to Metropolitan within 90 days after the date you would be first entitled to receive Long-Term Disability benefits. In no case should this proof be provided any later than 12 months after the date you would be entitled to first receive Long-Term Disability benefits.

Determinations of disability must be based on medical information current at the time you would be entitled to first receive Long-Term Disability benefits. Do not submit your application for benefits more than 3 months prior to the date you would be entitled to first receive Long-Term Disability benefits or it will be considered an incomplete application and will be returned to you. Metropolitan will ask you to resubmit your application no earlier than 3 months before and no later than 12 months after the date you would be entitled to first receive Long-Term Disability benefits.

If notice or proof is not given on time, the delay will not cause a claim to be denied or reduced as long as the notice or proof is given as soon as reasonably possible.

Metropolitan will have the right, while you are receiving Long-Term Disability benefits, to have you examined by doctors of Metropolitan's choice when and as often as Metropolitan reasonably chooses. The examination will be at Metropolitan's expense. Failure to attend a medical examination or cooperate with the medical examiner may be cause for denial or suspension of your benefits.

## **Questions about Claims**

If there is any question about a claim payment, you can call Metropolitan's Customer Service number, 1-800-638-0064.

## **Rights if Claim is Denied**

In the event a claim has been denied in whole or in part, you can request a review of your claim by Metropolitan. This written request for review should be sent to Group Claims Review at the address of the Metropolitan office that processed the claim, within 60 days after you receive notice of denial of the claim. When requesting a review, please state the reasons you believe the claim was improperly denied and submit any data, questions or comments you deem appropriate.

Metropolitan will re-evaluate all the information and you will be informed of the decision in writing within sixty days of receipt of your request.

(Also see "ERISA Information" on page 13.)

## **Legal Actions**

No legal action may be started to obtain benefits until 60 days after proof is given. No legal action may be started more than two years after the time proof must be given.

## **Termination of Coverage Under the Long-Term Disability Plan**

Your coverage ends on the earliest of the following dates:

the date your employment with IBM ends

the date you are no longer in a class which remains eligible for the Long-Term Disability Plan

the date the Long-Term Disability Plan ends.

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## If the Long-Term Disability Plan Ends or is Modified

IBM reserves the right to end, suspend, or amend the Long-Term Disability Plan at any time, in whole or in part. If the Plan is amended, the benefits payable could be reduced. In addition, benefits may be discontinued at any time for any group of employees.

If the Plan ends, Long-Term Disability benefits will be paid until the date the Plan ended, except in the following circumstances:

If the Plan ends in the calendar year in which you become entitled to first receive Long-Term Disability benefits, Long-Term Disability benefits will be payable until the end of that calendar year.

If the Plan ends during your waiting period and you would have been entitled to first receive Long-Term Disability benefits in the next calendar year, Long-Term Disability benefits will be payable until the end of that calendar year.

In no event, however, will benefits be paid beyond the end of the disability benefit period which applies to you

## Plan Funding

If you are entitled to first receive Long-Term Disability benefits prior to January 1, 1994, such benefits will be funded by IBM which may pay such benefits directly or insure all or part of these benefits on a year-to-year basis

If you are entitled to first receive Long-Term Disability benefits on or after January 1, 1994:

Any monthly Long-Term Disability benefit payable to you under the terms of the Long-Term Disability Plan through the end of the calendar year in which you are entitled to first receive such benefits will be:

insured by Metropolitan to the extent of the monthly benefit amount or \$10,000, whichever is less; and funded by IBM to the extent, if any, that the monthly benefit amount exceeds \$10,000

Any monthly Long-Term Disability benefit payable to you under the terms of the Long-Term Disability Plan after the end of the calendar year in which you are entitled to first receive such benefits will be:

funded by IBM, which may pay such benefits directly or may insure all or part of these benefits on a year-by-year basis

## ERISA Information

<b>Name of the Plan</b>	The IBM Long-Term Disability Plan
<b>Name and Address of Employer Maintaining the Plan</b>	IBM Corporation New Orchard Road Armonk, NY 10504
<b>Employer Identification Number</b>	13-0871985
<b>Plan Number</b>	525
<b>Type of Plan</b>	Employee Welfare Plan including: Long-Term Disability Benefits
<b>Claim and ERISA Appeals</b>	Metropolitan Life Insurance Company IBM Disability Claims P. O. Box 3017 Utica, NY 13504
<b>Plan Administrator's Business Address and Telephone Number</b>	Office of the Plan Administrator IBM Human Resources Service Center 3808 Six Forks Road Raleigh, NC 27609  Telephone: (919) 301-2206

## Agent for Service of Legal Process

For disputes arising under those portions of the Plan insured by Metropolitan Life Insurance Company, service of legal process may be made upon Metropolitan Life Insurance Company at one of its legal offices, or upon the supervisory official of the Insurance Department in the state in which you reside.

For disputes arising under the Plan, service of legal process may be made upon the Plan Administrator.

## Fiduciaries

With respect to benefits under the Plan, the named fiduciaries of the Plan, within the meaning of Section 402(a) of ERISA, with authority to control and manage the operation of the Plan, are as follows:

Named Fiduciary	Area of Fiduciary Responsibility
Metropolitan	Provision of full and fair review of claim denials pursuant to Section 503 of ERISA
Plan Administrator	All other areas not included above

Each named fiduciary may appoint a person or persons other than a named fiduciary to carry out the fiduciary responsibilities of the named fiduciary under the Plan.

The fiduciary responsibilities of the named fiduciaries shall be exercisable severally and not jointly, and each named fiduciary's responsibilities will be limited to the specific areas indicated for such named fiduciary.

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## **Discretionary Authority of Plan Administrator and other Plan Fiduciaries**

In carrying out their respective responsibilities under the Plan, the Plan Administrator and other Plan fiduciaries shall have discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan. Any interpretation or determination made pursuant to such discretionary authority shall be given full force and effect, unless it can be shown that the interpretation or determination was arbitrary and capricious.

## **Plan Year**

The Plan's fiscal records are kept on a policy year beginning each January 1st and ending on the following December 31st.

## IBM Group Life Insurance (Effective January 1, 1997)

### Summary

During your career with the company, you will be provided with a Group Life Insurance Plan to help supplement your personal life insurance program.

Group Life Insurance (GLI) coverage is equal to two-times current annual salary (including your current variable pay target or current Annual Executive Incentive) rounded to the next higher multiple of \$1,000 (if not already a multiple thereof). The coverage maximum is \$2,000,000.

### Who Is Eligible

Regular full-time and part-time employees

Those on a leave of absence with benefits

Employees receiving benefits from the IBM Medical Disability Income Plan or the Long-Term Disability Plan

### What is Covered

If you die, the amount of group life insurance then in force is payable to the beneficiary(ies) you name or that is(are) prescribed by the Plan policy.

### How the Plan Works

Your insurance coverage starts on the first day of your regular employment and is equal to two-times your current annual salary (as defined by regular compensation), including your current variable pay target or your current Annual Executive Incentive (if you are eligible for one of these), rounded to the next higher multiple of \$1,000 (if not already a multiple thereof). The coverage maximum is \$2,000,000.

Note: For employees hired before January 1, 1994, GLI coverage is the greater of the above calculation or the amount of coverage available under the Plan's service-based schedule as of December 31, 1993. (For detail, see the section entitled "Prior Service-Based Schedule" at the end of this Summary Plan Description.)

For those on a leave of absence with benefits or on disability, your GLI coverage will be based on the annual salary you had on your last day worked (as defined by regular compensation) as a regular active employee, unless you are on a Personal Leave of Absence Work Option of three or more years. Those on a Personal LOA Work Option of three or more years will have coverage based on their current part-time work status.

No Group Life Insurance coverage is provided while you are on a Retirement Bridge Leave of Absence without benefits. If you retire from IBM before age 65 following such a leave, the amount of your insurance coverage on the date you retire will be one-half the amount for which you were insured prior to the date you went on leave, to a maximum of \$25,000 in coverage. When you reach age 65 in retirement, your insurance will be reduced to \$5,000 and will remain at that level throughout the rest of your retirement. If you take a Retirement Bridge Leave of Absence without benefits and later retire from IBM at or after age 65 following such a leave, the amount of your insurance coverage on the date you retire will be \$5,000.

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## Coverage After Active Employment Ceases

Coverage as an active employee ceases after you retire under the IBM Retirement Plan, begin a Retirement Bridge Leave of Absence without benefits, or leave the company. GLI coverage during retirement (until age 65) is equal to one-half of the amount that was in effect immediately prior to retirement, to a maximum of \$25,000. When a retiree reaches age 65 (either at or during retirement), GLI coverage is then reduced to \$5,000 and will remain at that level throughout the retirement period.

If you are receiving benefits under the IBM Medical Disability Income Plan (MDIP) or Long-Term Disability Plan (LTD), your Group Life Insurance coverage amount will be determined by your annual salary (as defined by regular compensation) in effect on your last day as an active employee. For those who begin to receive LTD benefits on or after January 1, 1997, the GLI calculation will include a variable pay target or Annual Executive Incentive, if you were eligible for one of these on your last day worked.

The conditions for converting insurance discussed in this Summary Plan Description also apply to any employee receiving benefits under the IBM Medical Disability Income Plan or Long-Term Disability Plan.

## Imputed Income

Under current IRS regulations, the value of the premium an employer pays for group life insurance coverage above \$50,000 is taxable to the covered employee and, therefore, the employer must apply imputed income and withhold related income taxes. Imputed income is calculated as follows:

1. Total GLI coverage - \$50,000 = Amount subject to Imputed Income
2. Amount Subject to Imputed Income / 1,000 = Units of Insurance
3. Units of Insurance x Cost per \$1,000 per Month (based on age)\* = Monthly Imputed Income
4. Monthly Imputed Income x 12 = Annual Imputed Income

(\*The following is the IRS Table used for the age-based cost.)

Age Brackets**	Cost per \$1,000 per Month
Under 25	\$0.05
25 to 29	0.06
30 to 34	0.08
35 to 39	0.09
40 to 44	0.10
45 to 49	0.15
50 to 54	0.23
55 to 59	0.43
60 to 64	0.66
65 to 70	1.27
70 and older	2.06

| (\*\* Age is assumed to be attained age on last day of the taxable year.)

| EXAMPLE: If an employee is 42 years old, has an annual salary of \$50,000, and has a current variable pay target of 10 percent, this employee's GLI coverage is \$110,000. The annual imputed income would be determined as follows:

| 1. \$110,000 - \$50,000 = \$60,000

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- | 2. \$60,000 / 1,000 = 60 units (/ = divided by)
- | 3. 60 units x \$0.10 = \$6.00 monthly imputed income
- | 4. \$6.00 x 12 = \$72.00 annual imputed income
- | If this employee was in a 28 percent tax bracket, the additional annual tax liability would be approximately \$20.16

For active employees, appropriate federal, state, local and Social Security taxes will be withheld each pay period. For affected inactive employees (other than those out on MDIP or LTD), imputed income will be indicated on a year-end W-2. These inactive employees will be responsible for related tax liabilities.

## Annual Salary as Defined by Regular Compensation

Regular compensation is defined for the purposes of determining the annual salary component of the GLI calculation for (1) the current amount of GLI benefit coverage, and (2) the related imputed income amount for each pay period.

For each pay period, regular compensation means the current regular monthly compensation for regularly scheduled hours, not over 40 hours each week

- | For employees on commission (and/or incentive) plans, regular compensation means the greater of the current salary equivalent or the "appropriate Retirement Earnings Master (REM) value". For Lotus employees on commission (and/or incentive), effective January 1, 2000 the current On-Target earning (OTE) value will be used for the current salary equivalent value.

An appropriate REM value is determined for "newly commissionable" employees (and/or newly on an Annual Executive Incentive) and "continuing commissionable" employees (and/or continuing on an Annual Executive Incentive).

Newly commissionable employees are on commission at any point in the current plan year and **WERE NOT** on commission in some part of the plan year prior, or the two consecutive plan years prior, or three consecutive plan years prior. For newly commissionable employees, regular compensation is the greater of current salary equivalent or current year-to-date REM of the current plan year (with actual variable pay payments or incentive payments subtracted before the current year-to-date REM value is determined). (This subtraction is done as a current target is already part of the GLI calculation.)

The same definition applies to those newly on an Annual Executive Incentive. Those newly on an Annual Executive Incentive are on incentive at any point in the current plan year and **WERE NOT** on this incentive in some part of the plan year prior, or the two consecutive plan years prior, or three consecutive plan years prior. For those newly on incentive, regular compensation is the greater of current salary equivalent or current year-to-date REM of the current plan year. The same subtraction as outlined for those on commission applies.

Continuing commissionable employees are commissionable at any point in the current plan year and **WERE** on commission in some part of the prior plan year, or the two consecutive plan years prior, or the three consecutive plan years prior. For continuing commission employees, regular compensation is the greater of current salary equivalent OR the current year-to-date REM (with actual variable pay payments or incentive payments subtracted before the REM value is determined) OR the REM average of the last 1, 2, or 3 consecutive plan years prior (with actual variable pay payments or incentive payments subtracted before the REM value is determined). (This subtraction is done as a current target is already part of the GLI calculation.)

Those continuing on an Annual Executive Incentive are on this incentive at any point in the current plan year and **WERE** on such an incentive in some part of the prior plan year, or the two consecutive plan years prior, or the three consecutive plan years prior. For those continuing on an Annual Executive Incentive, regular compensation is

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the greater of current salary equivalent OR the current year's year-to-date REM (with the appropriate payments subtracted) or the REM average of the last 1, 2, or 3 consecutive plan years prior (with the previously outlined subtraction).

Regular compensation for Personal LOA Work Options (under three years) is defined for the purposes of determining the annual salary component of the GLI calculation for: (1) the current amount of GLI benefit coverage, and (2) the related imputed income for each pay period. For Personal LOA Work Option (under three years), regular compensation is the greater of the current Personal LOA Work Option salary OR current full-time salary equivalent.

For Personal LOA Work Options of three or more years, their GLI benefit and related imputed income will be subject to the non-Personal LOA Work Option definitions for regular compensation (i.e., they are treated like regular part-time employees)

For those on MDIP/LTD or a leave of absence with benefits prior to January 1, 1997, regular compensation is defined as regular monthly salary (salary equivalent) for regularly-scheduled hours, not over 40 hours each week, as of the last day worked. For those who were on Annual Executive Incentive as of their last day worked prior to January 1, 1997, their regular compensation is defined as base salary plus incentive.

For those who begin LTD or go out on a leave of absence with benefits on or after January 1, 1997, their GLI coverage amount will be based on the GLI coverage in place as of the last day worked.

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## Variable Pay Targets

Employees who are eligible for variable pay consideration will have their current variable pay target included in the calculation of their GLI coverage benefit. Any current variable pay target will remain in effect until a new or different target is announced. New targets will become effective for GLI consideration on either the target's effective date or announcement date (whichever is later). If one is not eligible for a variable pay target, or if variable pay targets are discontinued, the GLI calculation (and related coverage and imputed income) will not include prior targets.

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## Waiving Coverage in Excess of \$50,000

For those who do not wish to have a GLI coverage level which creates imputed income (and related income tax consequences), opportunities to waive coverage in excess of \$50,000 have been or will be provided as follows:

1. During the initial offering period of the enhanced GLI, eligible individuals had until November 29, 1996 to submit their completed, signed waiver form to the Human Resources Service Center (HRSC).
2. In conjunction with the annual Personal Benefits Program (PBP) Open Enrollment, there is an opportunity for employees who are eligible for GLI coverage in excess of \$50,000 to either initiate a waiver for that excess coverage or to cancel a current waiver for the new plan year. No action is required during this period if you wish to keep your current GLI status as is.
3. For new hires there is a 30-day period from date of hire to submit a completed and signed waiver form to the HRSC if their GLI coverage is in excess of \$50,000 and they wish to waive that excess coverage.
4. For those who do not submit a waiver during the annual waiver opportunity (#2) or within 30 days of being newly hired (#3), they must experience a qualified status change consistent with submitting a waiver (within 30 days of the change) in the future.
5. If coverage is less than \$50,000, no waiver opportunity is available. If a change in salary (and/or variable pay targets or Annual Executive Incentive) creates GLI coverage in excess of \$50,000, the waiver opportunity

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becomes available. Employees experiencing this increase in GLI coverage will have 30 days from the effective date of the change to submit their completed and signed waiver form to the HRSC.

Once excess GLI coverage is waived, reinstatement of full coverage (based on two times regular annual compensation, including variable pay target or Annual Executive Incentive, if eligible) will only be allowed for qualified status changes (e.g., marriage, birth/adoption) (#4) or during an annual waiver opportunity (#2). Reinstated GLI coverage will go into effect at the beginning of the new plan year (#2) or the first of the month in which imputed income begins (for other reinstatement opportunities).

The same form is used for both initiating and canceling a waiver. This form is available through the HRSC. A completed and signed form must be sent to the HRSC for processing within 30 days of a qualified status change, within 30 days of being newly hired, or within the time frame communicated for the annual waiver opportunity.

ANYONE WISHING TO WAIVE GLI COVERAGE IN EXCESS OF \$50,000 SHOULD MAKE THIS DECISION VERY CAREFULLY AND ENSURE THAT CONSIDERATION HAS BEEN GIVEN TO PERSONAL SITUATIONS AND THE IMPACT ON DEPENDENTS. CANCELLATION OF A WAIVER IS ALLOWED ONLY WITH CONSISTENT QUALIFIED STATUS CHANGES AND MUST BE SUBMITTED WITHIN 30 DAYS OF THE QUALIFIED EVENT (E.G., MARRIAGE) OR DURING THE PBP OPEN ENROLLMENT.

Qualified status changes that would provide an opportunity to waive GLI coverage in excess of \$50,000 are: divorce, legal separation, death of a spouse/dependent, gain in life insurance benefits (in excess of \$50,000) due to change in job status and/or salary (and related changes in variable pay targets or Annual Executive Incentives), or loss of dependent.

| Qualified status changes that would provide an opportunity to cancel a previously-processed waiver are: marriage, | birth/adoption, going on Long Term Disability

Imputed income can also be avoided for the coverage amount assigned to beneficiary designations of tax-exempt charities (i.e., organizations determined by IRS guidelines to conform with Section 501(c)(3) and state- and local government-sponsored organizations, such as public schools, colleges and universities). Changes to Designation of Beneficiary forms can be made at any time and no qualified status change is necessary. These forms are available through the IBM Human Resources Service Center (HRSC). Administrative guidelines for designating such charities are outlined on the newly revised Designation of Beneficiary form (revised in August 1996).

Up to ten charity designations can be made in any whole percentage amount. Such designations do not have to be for the entire GLI coverage amount or the entire excess amount over \$50,000. Combinations of charity/non-charity designations are allowed; the imputed income and related taxes will be calculated accordingly. For example, if an employee wants to designate 40 percent of a total GLI coverage amount of \$100,000 to a tax-exempt charity, that would leave \$10,000 subject to imputed income (\$100,000 minus the first \$50,000 not subject to imputed income minus \$40,000 for the designated charity).

Future salary increases and/or changes in a variable pay target (or Annual Executive Incentive) will create a higher level of GLI coverage and may introduce imputed income for those who have previously submitted eligible charity designations (in order to avoid imputed income and related tax liabilities). A review of charity designation percentages when these increases and/or changes occur is recommended.

For example: an employee with \$100,000 in GLI coverage may designate an eligible charity to receive 50 percent of the proceeds, and thus avoid imputed income entirely. With a salary increase, the GLI coverage amount becomes \$110,000. With the current 50 percent designation, \$55,000 would go to the charity and not be subject to imputed income. With the remaining \$55,000 (50 percent of the coverage), the first \$50,000 is not subject to imputed income, but the remaining \$5,000 is subject to imputed income. The current 50 percent designation to charity would need to be changed to 55 percent (the nearest whole percentage closest to \$60,000) in order to avoid imputed income. With a 55 percent designation, \$60,500 would go to the charity and all imputed income would again be avoided. (See "Designating a Beneficiary" for directions on submitting a change.)

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If an employee wants to designate all GLI coverage in excess of \$50,000 to a tax-exempt charity, this can be written on the beneficiary form and the "%" section should be left blank. Employees who have already submitted a form with percentages, but would prefer to simply designate the excess in this manner, will need to submit a new beneficiary form with this change. Otherwise, they may be required to resubmit a form with recalculated percentages (previously described) whenever the GLI benefit coverage amount increases (e.g., based on a salary increase) and some amount of that coverage then becomes subject to imputed income.

If an employee wants to designate more than one charity for some or all of the GLI coverage in excess of \$50,000, this can also be written on the form. In this case, percentages do need to be written on the form with a statement indicating that these percentages are either to be applied against the entire coverage amount or the coverage amount in excess of \$50,000.

Additionally, if employees choose tax-exempt charities for some amount of GLI coverage but do not wish to include such charities for their travel accident insurance designation, they will need to submit a separate beneficiary form for Travel Accident Insurance.

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## **Retroactive Changes Impacting GLI Benefit Coverage and/or Imputed Income**

If an employee dies during the period between the effective date of a retroactive GLI factor change and the date the change is processed, the GLI benefit coverage amount will be calculated as follows:

1. If the retroactive GLI factor change creates a GLI benefit increase, the increased coverage amount will be processed and paid to the beneficiary(ies)

OR

2. If the retroactive GLI factor change creates a GLI benefit decrease, the GLI benefit coverage amount will be calculated based on the factor in effect prior to the factor decrease.

A GLI factor includes any of the following: salary increase, salary decrease, salary band change, division change, age correction, changes in variable pay targets, IRS age factors, and/or corrections to REM data (for commissioned or incentive employees).

Changes in imputed income amount as a result of a retroactive change in a GLI factor will be effective the next available pay period and imputed income adjustments will not be made retroactively by the system. Manual retros to adjust the imputed income will be done only on an exception basis, and only with the approval of the Program Administrator and/or the Program Manager.

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## **Accelerated Death Benefit**

In the event of a documented terminal illness and a life expectancy of six months or less, employees will have access to one-half their GLI benefit (but not more than \$50,000) in advance of death to use as they wish. The remainder of the GLI benefit will be paid out to the designated beneficiaries as a result of the regular death claim processing. Anyone wishing detail on this process should contact Prudential directly at 1-800-524-0542.

To receive this benefit, your GLI must not be assigned. Benefits are available on a voluntary basis only. If you are required by law to use this option to meet the claims of creditors or you are required by a government agency to use this option to apply for, get or keep a government benefit or entitlement, you are not eligible for this benefit.

Eligibility for this benefit ends with your date of separation or retirement.

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## Designating a Beneficiary

- | You can choose your beneficiary and change your beneficiary at any time by completing the Designation of Beneficiary form, which is available from the HRSC. The change becomes effective when the completed form is received and processed by the HRSC. In the event a beneficiary form is received after the death of the employee, if Prudential has already paid out the GLI benefit, this beneficiary change will not be valid. Be sure you review your copy of your beneficiary designation periodically to make sure your choice is current. If you do not name a beneficiary, or if the beneficiary dies before you and a new beneficiary is not chosen, payments will be made to your spouse, if living; otherwise, payments will be made in equal shares to your surviving children or, if none survives, to your surviving parents, equally. If no spouse, child or parent is then living, payments are made to the executors or administrators of your estate.
- | It is important to remember that if an employee designates his or her spouse as the beneficiary, and the employee and spouse are later divorced, this former spouse will remain the employee's beneficiary until and unless the employee makes a change. Also remember that if an employee leaves IBM the GLI benefit is discontinued when employment ceases. If the employee is rehired at a later date, any beneficiary designations from the prior employment period are not valid; a new beneficiary would have to be designated.
- | If you are in doubt about whom you designated as beneficiary, submit a Designation of Beneficiary form. The most recent form received by IBM will always be used to determine designated beneficiaries. If you wish to receive verification of beneficiary information, you must send a written and signed request to Prudential. Your request should include your return address, employee serial number, Social Security number and signature. Prudential's address for beneficiary verification is: Prudential Group Life Administration, 2 South, 250 Gibraltar Road, Horsham, PA 19044

## Form of Benefit Payment (Mode of Settlement)

You may choose a mode of settlement by making a request of Prudential. If you have not chosen a mode of settlement prior to your death, your beneficiary may enter into an agreement with Prudential as to how the group life insurance benefits will be paid. Options include (1) income payments with interest for a specified number of years, (2) income payments with interest for the beneficiary's lifetime, (3) income payments of a stated amount until the fund of principal and interest is used up, (4) a lump-sum payment, or (5) funds may be left with the insurance company with the interest paid as a regular income, (6) money market deposit account, (7) certificates of deposit and (8) a check-writing account. With this check-writing feature, beneficiaries will have the option of receiving GLI proceeds in a checking account arrangement. They will be able to write checks as necessary from an interest-bearing account until the fund is depleted. The insurance proceeds may also be paid under more than one option (for example, partly in a lump-sum amount with the balance in monthly installments).

If you are interested in pre-designating one of these modes of settlement, you will need to contact Prudential directly at 1-800-524-0542.

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## Converting Group Life Insurance

- | Whenever your life insurance is reduced or terminates (for example, because of retirement or if you leave the company other than through a divestiture), you can convert a portion or all of the amount discontinued into any one of the forms usually issued by the insurance company, except term insurance in excess of one year or any policy containing disability or other supplementary benefits. For divestitures, conversion may be available depending on the effective date and coverage amount of the insurance plan provided by the new company.

The period of time during which the conversion must be made varies with the situation:

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1. If an employee terminates (i.e., leaves the business for reasons other than retirement) or goes on a leave of absence without benefits, then life insurance terminates on the date of the employee's termination and is followed by a 31-day period during which the employee can convert the amount of insurance under this policy. Should the employee die during this 31-day period, the insurance that would have been paid prior to termination would be paid to the beneficiary.
2. If an employee other than one who has been on a Retirement Bridge Leave of Absence without benefits has a reduction in insurance for retirement, then the reduction occurs 31 days following retirement; following this 31-day period, there is a 31-day conversion period during which the employee may elect to convert the amount of the reduction. Should the employee die during the 62 days following retirement, the full amount of insurance which was in force prior to the event of death will be paid to the beneficiary.
3. If a retiree has a reduction in insurance for reaching age 65, then the reduction occurs 31 days after the last work day of the month in which the retiree reaches age 65. Following this 31-day period, there is a 31-day conversion period during which the retiree may elect to convert the amount of the reduction. Should a retiree die during this period, maximum 92 days, the full amount of insurance which was in force prior to the event of death would be paid to the beneficiary.

If you wish to exercise the conversion privilege available under this policy, you must do so within 31 days of the date your insurance ends or is reduced (see above). The individual policy will take effect when the 31-day period ends.

To initiate the conversion, you should contact any local Prudential office or agent, who has information on how to convert your insurance. IBM cannot give you rate information or process your conversion. For general information about converting, you may call Prudential at (973) 548-6061 from 9 a.m. - 11 a.m. and 1 p.m. - 3 p.m. (Eastern time), Monday through Friday (TTY: 973-548-6079).

As part of the conversion process, you may apply for an individually underwritten policy at the same time. If you apply for such a policy and show satisfactory evidence of good health, it is possible that you may qualify for preferred rates. The process by which one applies for a conversion policy and an individually underwritten policy at the same time is called the Dual Application Process. Under this process, if the evidence of good health is satisfactory, you will be issued the individually underwritten policy; otherwise, you will automatically be issued a conversion policy. The advantages of an individually underwritten policy include the possibility of more favorable rates, a larger selection of plans and the option, at certain ages, of an Accidental Death Benefit in addition to the usual death benefits.

\*\* It is important to note, however, that the conversion policy must be issued and delivered within the United States. If you live outside the United States (this includes Puerto Rico, but not the Virgin Islands or Guam) and wish to convert an individual policy, you must either:

- (a) physically apply for and receive the policy in the United States; or
- (b) designate a person in the United States with the Power of Attorney to apply for the conversion on your behalf \*\*

## How to File a Claim

Your beneficiary will receive from IBM the necessary forms and instructions for filing a claim, including the mode of payment of the life insurance. Upon receipt of the completed forms and documentation, IBM will forward the insurance claim to the insurance carrier for processing and payment of the life insurance proceeds. If the life insurance beneficiary is legally incapable of handling his/her affairs, payments will be made to the responsible entity appointed by the courts.

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## Prior Service-Based Schedule

To the extent that the amount of GLI coverage in effect as of December 31, 1993 (for those hired on or before that date) exceeds the amount of GLI coverage as of January 1, 1997, the active full-time employee benefit schedule is as follows (the benefit for regular part-time employees is 75 percent of all dollar amounts stated):

Period of IBM Service (As of December 31, 1993)	Amount of GLI Coverage
Less than 1 year	\$ 5,000.00
1 year and less than 2 years	6,000.00
2 years and less than 3 years	12,000.00
3 years and less than 4 years	18,000.00
4 years and less than 5 years	24,000.00
5 years and less than 6 years	30,000.00
6 years and less than 7 years	32,000.00
7 years and less than 8 years	34,000.00
8 years and less than 9 years	36,000.00
9 years and less than 10 years	38,000.00
10 years and less than 11 years	40,000.00
11 years and less than 12 years	41,000.00
12 years and less than 13 years	42,000.00
13 years and less than 14 years	43,000.00
14 years and less than 15 years	44,000.00
15 years and less than 16 years	45,000.00
16 years and less than 17 years	45,500.00
17 years and less than 18 years	46,000.00
18 years and less than 19 years	46,500.00
19 years and less than 20 years	47,000.00
20 years and less than 21 years	47,500.00
21 years and less than 22 years	48,000.00
22 years and less than 23 years	48,500.00
23 years and less than 24 years	49,000.00
24 years and less than 25 years	49,500.00
25 years and over	50,000.00

The IBM Group Life Insurance Plan is underwritten by the Prudential Insurance Company of America, Prudential Plaza, Newark, New Jersey.

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This is only a summary of the IBM Group Life Insurance Plan and does not cover all the details. In the event a claim is made, the actual wording of the policy will govern.

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## **Certificate of Group Life Insurance - Active/Retired Employee (on/after 1/1/97)**

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The Prudential Insurance Company of America relies entirely on the master group insurance contract and the group insurance certificate(s) made part of that contract for eligibility, coverage, and other decisions concerning these insurance products. The facsimile copy shown below has been made available for the convenience of Certificate holders. In the event the following information differs from or conflicts with those contracts and certificates, the master insurance contract and certificate(s) control. A paper copy of the certificate(s) is available from IBM.

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This Certificate replaces any certificate issued to you prior to January 1, 1997 with respect to the Group Coverages described herein.

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## Certificate of Group Life Insurance

## The Prudential Insurance Company of America

Certifies that subject to the terms and conditions of the Group Policy No. GX-16000 (herein called the Group Policy), it provides the insurance referred to herein for active regular full-time and part-time Employees (and regular full-time Employees who retired after October 21, 1977 and part-time Employees who retire on and after January 1, 1997) of

**INTERNATIONAL BUSINESS MACHINES CORPORATION**  
(Herein called the Employer)

The Group Policy is reinsured in part by the following companies: Aetna Life Insurance Company, Connecticut General Life Insurance Company, Golden State Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company, Metropolitan Life Insurance Company, North Carolina Mutual Life Insurance Company, and The Travelers Insurance Company. This reinsurance does not create any direct liability on the part of the reinsuring company to IBM or any person claiming under the Group Policy. The Prudential Insurance Company of America is alone directly liable for the payment of all benefits under the Group Policy.

## SCHEDULE OF BENEFITS

The Group Policy's Schedule of Insurance Amounts for regular full-time and part-time employees and Assignment Limitations, Mode of Settlement and Conversion privilege provisions are summarized below. Consult the "About Your Benefits" booklet issued to you by IBM for a further description of the terms and conditions of your IBM coverage

This Certificate, which is merely evidence of insurance provided under the Group Policy, is furnished in accordance with, and subject in every respect to, the Group Policy which alone constitutes the agreement under which payments are made. The insurance is effective only after the person concerned is eligible for insurance and becomes and remains insured in accordance with the terms, provisions and conditions of the Group Policy.

## LIFE INSURANCE

Upon receipt of due written proof of your death, the amount of Group Life Insurance for which you are insured under the Group Policy shall be payable to the beneficiary designated by you on an IBM Designation of Beneficiary form, in accordance with the terms of the Group Policy. Any part of such insurance for which no beneficiary is designated or surviving at your death will be payable in accordance with the terms of the Group Policy.

**Schedule of Insurance Amounts.**--An Employee's amount of Term Life Insurance under the Group Policy is the amount applicable to his/her Benefit Class under the following table, subject to the further provisions of this Certificate:

Benefit Classes	Amount of Insurance*
All Employees	An amount equal to the lesser of (1) and (2): (1) 200% of the Employee's annual Earnings. If the amount is not a multiple of \$1,000, it will be rounded to the next higher multiple of \$1,000. (2) \$2,000,000

\*If an Employee was covered for Employee Term Life Insurance under the Group Policy prior to January 1, 1994, the Employee's amount of insurance will be the greater of the amount shown and the amount of insurance for which he/she was covered prior to January 1, 1994.

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**Limitation and Reduction Provisions:**

The amount of insurance applicable to each Retired Employee is determined as follows:

- (a) Subject to paragraph (c) below, if the Employee retires before he/she shall have attained age 65, his/her amount of insurance shall be the lesser of: (a) fifty percent (50%) of the amount of insurance applicable to his/her classification as an active Employee under the Group Policy; and (b) \$25,000. This reduced amount shall become effective after the thirty-first day following the day on which he/she retired. The amount of insurance applicable to a Retired Employee shall be \$5,000 after the thirty-first day following the last work day of the month during which he/she attains age 65 and while he/she is insured under the Group Policy as a Retired Employee.
- (b) Subject to paragraph (c) below, if the Employee retires at or after age 65, his/her amount of insurance shall be \$5,000 after the thirty-first day following his/her retirement date, provided he/she is insured under the Group Policy as a Retired Employee.
- (c) The amount of insurance applicable to each Retired Employee in accordance with the foregoing provisions hereof, shall be reduced by the amount of insurance applicable to him/her under the Group Policy No. G-187500P, previously issued to the Employer by The Travelers Insurance Company, on the day before he/she became a Retired Employee.

**Assignment Limitations.**--The insurance may be assigned as a gift assignment or as an assignment to a viatical settlement company. An assignment may apply to any of your rights, benefits or privileges. This includes your right to designate a beneficiary or to convert to another policy. Prudential does not assume any responsibility for the validity or sufficiency of any assignment. Prudential shall not be considered to have knowledge of any assignment unless the original or a duplicate is filed with Prudential through IBM.

If there is an assignment in effect but no beneficiary designated by the assignee, any amount of insurance which then becomes payable because of your death will be payable to the assignee. If the assignee is not living, it will be payable to the assignee's estate. In the circumstances described in the two preceding sentences the "Beneficiary Provisions" of the Group Policy do not apply.

**Mode of Settlement Provisions.**--You (or your beneficiary if you make no election) may elect payment of the insurance as described in the "About Your Benefits" booklet. Other methods of settlement may be arranged with Prudential. The minimum interest rate for all methods of payment is 2 3/4%. The applicable interest rate will be the rate applied by Prudential to the method of payment selected. Information about the available methods may be obtained from Prudential upon request to IBM.

**Conversion Privilege.**--If all or part of an Employee's life insurance ends for one of the reasons stated below, the Employee may convert the insurance which ends to an individual policy of life insurance. Evidence of insurability will not be required. The reasons are:

- (1) All of the Employee's insurance ends because: the Employee's employment ends; the Employee transfers out of an eligible class; or all term life insurance of the Group Policy for the Employee's class ends by amendment or because the Group Policy ends.
- (2) The Employee's amount of insurance is reduced because of: the end of the Employee's membership in an eligible class; or an amendment to the Group Policy that changes the benefits for the Employee's class; or the Employee's age.

Any conversion for one of the above reasons is subject to the rest of this Section.

**Availability.**--The Employee must apply in writing for the individual policy and pay the first premium within 31 days after the Employee's insurance under the Policy ends or the amount of such insurance is reduced.

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These are the exceptions to the above rule:

- (1) If the Employee has been given written notice of the conversion privilege more than 15 days, but less than 90 days, after the Employee's insurance under the Policy ends or the amount of such insurance is reduced, the Employee must apply for the individual policy and pay the first premium payment by the forty-fifth day after he/she has been given such notice.
- (2) If the Employee has not been given notice of the conversion privilege within 90 days after the Employee's insurance under the Policy ends or the amount of such insurance is reduced, the Employee must apply for the individual policy and pay the first premium by the end of such 90 days.

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**Individual Policy Requirements**--The individual policy must conform to the following:

Amount: Not more than the following:

- (1) If all of the Employee's amount of insurance under the Policy ends, not more than the amount of such insurance when it ends. But, if it ends because all term life insurance of the Group Policy for the Employee's class ends, the total amount will not exceed the total amount of all the Employee's life insurance then ending under the Group Policy reduced by the amount of group life insurance from any carrier for which the Employee is or becomes eligible within the next 45 days
- (2) If the amount of the Employee's insurance under the Policy is reduced, not more than the amount of the reduction.

Form: Any form of a life insurance policy that:

- (1) conforms to Title VII of the Civil Rights Act of 1964, as amended, having no distinction based on sex; and
- (2) is one that Prudential usually issues at the age and amount applied for.

This does not include term insurance or a policy with disability or supplementary benefits. But, the policy may be issued with preliminary term insurance that lasts for one year starting with its effective date.

Premium: Based on Prudential's rate as it applies to the form and amount, and to the Employee's class of risk and age on its effective date

Effective Date: The end of the 31 day period during which the Employee may apply for it.

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## **Certificate of Group Life Insurance - Bridge Leave of Absence (on/after 10/1/93)**

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The Prudential Insurance Company of America relies entirely on the master group insurance contract and the group insurance certificate(s) made part of that contract for eligibility, coverage, and other decisions concerning these insurance products. The facsimile copy shown below has been made available for the convenience of Certificate holders. In the event the following information differs from or conflicts with those contracts and certificates, the master insurance contract and certificate(s) control. A paper copy of the certificate(s) is available from IBM.

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This Certificate replaces any certificate issued to you prior to January 1, 1997 with respect to the Group Coverages described herein

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## Certificate of Group Life Insurance

## The Prudential Insurance Company of America

Certifies that subject to the terms and conditions of the Group Policy No. GX-16000 (herein called the Group Policy), it provides the insurance referred to herein for full-time Employees who were retired by the Employer and reinstated for coverage under the Group Policy after a bridge leave of absence which commenced on or after October 1, 1993

**INTERNATIONAL BUSINESS MACHINES CORPORATION**  
(Herein called the Employer)

The Group Policy is reinsured in part by the following companies: Aetna Life Insurance Company, Connecticut General Life Insurance Company, Golden State Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company, Metropolitan Life Insurance Company, North Carolina Mutual Life Insurance Company, and The Travelers Insurance Company. This reinsurance does not create any direct liability on the part of the reinsuring company to IBM or any person claiming under the Group Policy. The Prudential Insurance Company of America is alone directly liable for the payment of all benefits under the Group Policy.

## SCHEDULE OF BENEFITS

The Group Policy's Schedule of Insurance Amounts for regular employees and Assignment Limitations, Mode of Settlement and Conversion privilege provisions are summarized below. Consult the "About Your Benefits" booklet issued to you by IBM for a further description of the terms and conditions of your IBM coverage.

This Certificate, which is merely evidence of insurance provided under the Group Policy, is furnished in accordance with, and subject in every respect to, the Group Policy which alone constitutes the agreement under which payments are made. The insurance is effective only after the person concerned is eligible for insurance and becomes and remains insured in accordance with the terms, provisions and conditions of the Group Policy.

## LIFE INSURANCE

Upon receipt of due written proof of your death, the amount of Group Life Insurance for which you are insured under the Group Policy shall be payable to the beneficiary designated by you on an IBM Designation of Beneficiary form, in accordance with the terms of the Group Policy. Any part of such insurance for which no beneficiary is designated or surviving at your death will be payable in accordance with the terms of the Group Policy.

**Schedule of Insurance Amounts.**--An Employee's amount of Term Life Insurance under the Group Policy is the amount applicable to his/her Benefit Class under the following table, subject to the further provisions of this Certificate:

Benefit Classes	Amount of Insurance
All Employees.....	An amount equal to the lesser of (1) and (2): (1) 50% of the amount for which the Employee was insured as an active Employee. If the amount is not a multiple of \$1,000, it will be rounded to the next higher multiple of \$1,000. (2) \$25,000.

Limitation and Reduction Provisions:

On and after the Employee's attainment of age 65 his/her amount of insurance shall, while he/she is insured under the Group Policy, be \$5,000

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**Assignment Limitations.**--The insurance may be assigned as a gift assignment or as an assignment to a viatical settlement company. An assignment may apply to any of your rights, benefits or privileges. This includes your right to designate a beneficiary or to convert to another policy. Prudential does not assume any responsibility for the validity or sufficiency of any assignment. Prudential shall not be considered to have knowledge of any assignment unless the original or a duplicate is filed with Prudential through IBM.

If there is an assignment in effect but no beneficiary designated by the assignee, any amount of insurance which then becomes payable because of your death will be payable to the assignee. If the assignee is not living, it will be payable to the assignee's estate. In the circumstances described in the two preceding sentences the "Beneficiary Provisions" of the Group Policy do not apply.

**Mode of Settlement Provisions**--You (or your beneficiary if you make no election) may elect payment of the insurance as described in the "About Your Benefits" booklet. Other methods of settlement may be arranged with Prudential. The minimum interest rate for all methods of payment is 2 3/4%. The applicable interest rate will be the rate applied by Prudential to the method of payment selected. Information about the available methods may be obtained from Prudential upon request to IBM.

**Conversion Privilege.**--If all or part of an Employee's life insurance ends for one of the reasons stated below, the Employee may convert the insurance which ends to an individual policy of life insurance. Evidence of insurability will not be required. The reasons are:

- (1) All of the Employee's insurance ends because: the Employee's employment ends; the Employee transfers out of an eligible class; or all term life insurance of the Group Policy for the Employee's class ends by amendment or because the Group Policy ends
- (2) The Employee's amount of insurance is reduced because of: the end of the Employee's membership in an eligible class; or an amendment to the Group Policy that changes the benefits for the Employee's class; or the Employee's age

Any conversion for one of the above reasons is subject to the rest of this Section.

**Availability.**--The Employee must apply in writing for the individual policy and pay the first premium within 31 days after the Employee's insurance under the Policy ends or the amount of such insurance is reduced.

These are the exceptions to the above rule:

- (1) If the Employee has been given written notice of the conversion privilege more than 15 days, but less than 90 days, after the Employee's insurance under the Policy ends or the amount of such insurance is reduced, the Employee must apply for the individual policy and pay the first premium payment by the forty-fifth day after he/she has been given such notice
- (2) If the Employee has not been given notice of the conversion privilege within 90 days after the Employee's insurance under the Policy ends or the amount of such insurance is reduced, the Employee must apply for the individual policy and pay the first premium by the end of such 90 days

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**Individual Policy Requirements**—The individual policy must conform to the following:

**Amount:** Not more than the following:

- (1) If all of the Employee's amount of insurance under the Policy ends, not more than the amount of such insurance when it ends. But, if it ends because all term life insurance of the Group Policy for the Employee's class ends, the total amount will not exceed the total amount of all the Employee's life insurance then ending under the Group Policy reduced by the amount of group life insurance from any carrier for which the Employee is or becomes eligible within the next 45 days.
- (2) If the amount of the Employee's insurance under the Policy is reduced, not more than the amount of the reduction

**Form:** Any form of a life insurance policy that:

- (1) conforms to Title VII of the Civil Rights Act of 1964, as amended, having no distinction based on sex; and
- (2) is one that Prudential usually issues at the age and amount applied for

This does not include term insurance or a policy with disability or supplementary benefits. But, the policy may be issued with preliminary term insurance that lasts for one year starting with its effective date.

**Premium:** Based on Prudential's rate as it applies to the form and amount, and to the Employee's class of risk and age on its effective date.

**Effective Date:** The end of the 31 day period during which the Employee may apply for it.

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## IBM Travel Accident Insurance Plan

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### Summary

This Plan provides benefits if you are traveling away from your job location or home on company business. Eligibility starts with the first day of your employment. The Plan provides:

Benefits of up to five times annual compensation for accidental bodily injuries which result in death, dismemberment, loss of sight, hearing, or speech

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### Who is Eligible

Eligible employees are:

Regular full and part-time employees in travel status on company business and employees on a Personal Leave of Absence Work Option, and supplemental employees who travel on company business.

Eligible family members are:

your spouse, unmarried children and relatives or others normally residing in your household and principally dependent on you for financial support or physical well-being. Eligible same-gender domestic partners and their children are also covered.

Eligible family members who travel with you with IBM authorization are covered during the period for which their travel or living expenses are reimbursed by IBM (domestic per diems do not constitute reimbursement for dependents). If eligible family members accompany you on an assignment outside the United States, they are covered for the entire period of your assignment.

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### What is Covered

Coverage applies to travel on authorized company business (travel for which you are eligible for reimbursement of expenses). It is in effect continuously from the time the business trip actually begins — whether from your normally assigned job location, home or other location — until your return home or to your normally assigned job location, whichever occurs first, or when the trip is otherwise terminated. Travel to or from home to your normally assigned job location — even if followed by a business trip — does not constitute being in travel status on company business. Also, travel to and from courses eligible for Tuition Refund (or similar reimbursement) is not covered under the Plan.

In addition, coverage is in effect during the period of a temporary assignment requiring a change in residence, during which you receive either travel expense reimbursement or living expense reimbursement or allowance. However, the coverage is not in effect during commutation to or from the assigned job location or while on scheduled vacation.

Coverage is also in effect during the entire period of an assignment outside the United States including travel to and from the location.

In those instances where a trip "outside the building" does not include travel expenses, coverage applies if the journey arises out of and in the course of employment.

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Coverage applies to the commute between home and the normally assigned work location (i.e., regular point of reporting to which an employee is permanently assigned) only in the event that management has called the employee into work on a non-scheduled workday or during offshift on a scheduled workday. The normal roundtrip commute between home and the normally assigned work location for the regularly scheduled workday, even with contiguous overtime at management's request, is not covered by the Travel Accident Insurance Plan.

## Amount of Coverage

The Travel Accident Insurance Plan provides benefits if you have an accidental bodily injury which results in death (including brain death), dismemberment, or irrecoverable loss of sight, hearing or speech.

This table shows your travel accident insurance coverage. The payable amount is in addition to your IBM Group Life Insurance.

Benefits Payable For:

Insured person	Loss of life including brain death	Loss of use of one member or sight of one eye*	Loss of use of two or more members or sight (both eyes) or total loss of hearing (both ears) or speech	Loss of hearing one ear
Employee	5x annual compensation (\$50,000 min.)	2 1/2 x annual compensation (\$25,000 min.)	5x** annual compensation (\$50,000 min.)	2 1/2 x annual compensation (\$25,000 min. \$200,000 max.)
Eligible family member	\$50,000	\$25,000	\$50,000	\$25,000

\* Includes dismemberment

\*\* This is the maximum benefit for any combination of the above.

Annual compensation means 12 times your regular monthly salary, plus any current variable target or Annual Executive Incentive. If you are under one of IBM's sales plans, annual compensation is 12 times the greater of the average of regular monthly salary and commission payments during the 36 full calendar months immediately preceding the month in which the accident occurs or the current monthly salary equivalent. For purposes of this Plan, regular monthly salary does not include any other payments, such as awards and additional compensation resulting from working unusual hours or conditions (for example, nonscheduled workdays, overtime, or a different shift). For Lotus employees on commission (and/or incentive), effective January 1, 2000 the current On-Target earning (OTE) value will be used for the current salary equivalent value.

The Travel Accident Insurance Plan provides an additional payment of the face value of any personal life insurance, up to \$100,000 per individual, when invalidated because of travel on company business.

## Aggregate Limit of Liability

The company's limit of liability with respect to all insured persons while in any one accident shall not exceed the below stated aggregate limit of liability:

\$60,000,000 for any aircraft accident

\$100,000,000 for any non-aircraft accident.

If the aggregate amount of all indemnities otherwise payable by reason of coverage provided under this policy exceeds such aggregate limit of liability, the company shall not be liable with respect to each such insured for a

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greater proportion of the indemnities otherwise payable than the aggregate limit of liability bears to the aggregate amount of all such indemnities

## Travel Accident Insurance Plan Exclusions

This Plan does not cover any loss resulting from sickness, disease, self-inflicted injuries, suicide or any injuries sustained when serving in the armed forces of any country at war, whether declared or not. Also, coverage does not apply while you are on a scheduled vacation, except while you are on an assignment outside of the United States.

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## How the Plan Works

### Choosing a Beneficiary

- | You can choose your beneficiary and change your beneficiary at any time by completing the beneficiary designation form (ZM02-6060). Unless otherwise specified on the designation form, your beneficiary will be the same as designated for your IBM Group Life Insurance. If you do not name a beneficiary or if the beneficiary dies first and a new beneficiary is not chosen, payments will be made to your spouse, if living; otherwise, in equal shares to your surviving children or, if none survives, in equal shares to your surviving parents. If no spouse, child or parent is living, payments are made to the executors or administrators of your estate.
- | It is important to remember that if an employee designates his or her spouse as the beneficiary, and the employee and spouse are later divorced, this former spouse will remain the employee's beneficiary until and unless the employee makes a change. Also remember that if an employee leaves IBM the Travel Accident Insurance benefit is discontinued when employment ceases. If the employee is rehired at a later date, any beneficiary designations from the prior employment period is not valid; a new beneficiary would have to be designated.

### Payments to Your Beneficiary

Payments for loss of life are made to beneficiaries as specified above. The beneficiary will be given the choice of receiving the payment in a single amount, in equal monthly installments according to the chart below, or partly in a single amount with the balance in monthly installments. When payments are made in monthly installments, the insurance company credits interest at its current rate per year on the unpaid balance.

This chart shows the installment amount including interest at the rate of 6.5 percent for each \$1,000 of insurance. Naturally, interest rates vary and this chart only illustrates the effect of installment payments using a 6.5 percent rate only.

Installment Period	Monthly Installment per \$1,000 of Insurance	Installment Period	Monthly Installment per \$1,000 of Insurance
1 year	\$85.83	5 years	\$19.45
2 years	44.31	10 years	11.28
3 years	30.48	15 years	8.65
4 years	23.58	20 years	7.40

If the beneficiary dies before the full amount of insurance is paid out, any balance will be paid to the executors or administrators of the beneficiary's estate unless you or the beneficiary had stipulated some other arrangement. Payments for dismemberment, irrecoverable loss of sight, hearing, speech or loss of use will be made only in a lump sum to the insured individual.

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If the beneficiary is a minor, payment will be made to the appointed guardian. If the beneficiary is legally incapable of handling his or her affairs, payment will be made to the responsible entity appointed by the courts.

## Conversion Privileges

When coverage under the Travel Accident Insurance Plan ceases because you leave or retire from IBM, you can convert a portion or all of the insurance to an individual policy upon payment of the appropriate premium. The converted policy, issued without evidence of insurability, provides indemnity for accidental death and dismemberment only in an amount up to five times annual compensation not to exceed \$250,000. To convert your Travel Accident Insurance Policy, you must apply to the insurance company (CIGNA) within 31 days after your separation date from IBM by submitting a Travel Accident Insurance Conversion Notice. A conversion form may be obtained by calling the IBM Human Resources Service Center (HRSC) at 800-796-9876. The conversion form, signed by the appropriate IBM representative, will be mailed to your home. For more information on conversion of your policy (i.e., rates), please call CIGNA at 800-441-1832 (TTY: 1-800-552-5744) and have your completed conversion form available as a reference.

## How to File a Claim

Employees who suffer an accident while traveling on company business should contact their manager.

In the case of the employee's death, the beneficiary will be contacted by IBM and provided with the necessary forms and instructions for filing a claim. In the case of the death of employees' dependents who are covered, employees should initiate the claims procedure by notifying their manager. Upon receipt of the completed forms and documentation, IBM will forward the claim to the insurance carrier for processing and payment. For same-gender domestic partners, a properly executed same-gender domestic partner IBM affidavit will be required for claim processing.

**Proof of Loss:** Written proof of loss must be furnished to Cigna in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the company is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

This is only a summary of the IBM Travel Accident Insurance Plan and highlights the main features of the Plan. When a claim is made, the actual wording of the policy will govern.

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## IBM Long-Term Care Insurance Program

### Summary

The IBM Long-Term Care Insurance Program can help protect you from the high cost of long-term care. It allows you choice and flexibility by covering services not only in nursing homes, but in your own home or in an adult day care center as well. The Program also offers respite care benefits that allow unpaid caregivers, such as family members, a chance to take time off from caregiving responsibilities.

The IBM Long-Term Care Insurance Program was specifically developed for IBM by John Hancock Life Insurance Company

### Who is Eligible

The following people are eligible to apply for the IBM Long-Term Care Insurance Program:

#### Eligible Employees

- Regular full- and part-time employees who are actively at work
- Employees receiving benefits under the IBM Medical Disability Income Plan or the Long-Term Disability Plan
- Employees on a company approved pre-retirement leave of absence

#### Eligible Family Members

- Spouses of eligible employees
- Eligible domestic partners of eligible employees
- Active employees' parents (if the employee enrolls)
- Active employees' parents-in-law (if the employee and spouse/domestic partner enroll)

### What is Covered

#### Levels of Care Covered

The IBM Long-Term Care Insurance Program allows you to receive the appropriate level of care, whether skilled, intermediate or custodial, and to choose the site of care that is best for you. The following services are covered:

**Nursing home care:** Services provided by a licensed skilled, intermediate, or custodial nursing facility.

**Home health care:** Services provided in your home by registered nurses, licensed practical nurses, licensed therapists, and home health aides working through a licensed home health agency.

**Adult day care:** Services provided through approved adult day care centers which offer physical care in addition to educational and social activities

**Respite care:** Services which are designed to give temporary relief to unpaid caregivers. Respite care can be provided by professionals or non-professionals.

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## Relationship to Other IBM Plans

The IBM Medical Plan offers protection for acute medical care and provide for reimbursement of certain home health services when incurred as an extension of, or alternative to, professional services provided in a general hospital or skilled nursing facility. However, custodial care is not covered under the IBM Medical Plan.

## How the Plan Works

### Enrollment

Enrollments will be processed by John Hancock on an ongoing basis with evidence of insurability. The effective date of long-term care insurance coverage is the first month following the month the application is approved, although certain circumstances may cause a delay in the effective date of coverage. New hires who apply within 90 days of their date of hire are guaranteed acceptance without completing the Statement of Health. All other applicants must complete Statement of Health and be approved for coverage by John Hancock.

### Benefit Options

Three options are available. You select the option that best fits your needs:

	Option 1	Option 2	Option 3
Daily Maximum Benefit	\$65	\$135	\$200
Maximum Lifetime Benefit	\$120,000	\$250,000	\$365,000

The IBM Long-Term Care Insurance Program will pay the actual daily charges for services received up to your selected daily maximum. One hundred percent of the daily maximum benefit applies to nursing home services and 50 percent to home health care, adult day care, and respite care. For example, under Option 2 you will receive up to \$135 per day if you are in a nursing home and up to \$67.50 if you are receiving home health care or adult day care, which are typically less expensive than nursing home services.

### Premium Payments

The amount of your premium will depend upon the coverage option you select and your age at enrollment. The younger you are when you apply for this coverage, the lower your premium will be.

The following are some examples of current monthly premiums, effective October 1, 1999:

Ages	Daily Maximum Benefit Options		
	\$65.00	\$135.00	\$200.00
30	6.45	11.35	15.90
40	13.01	23.51	33.26
50	20.62	39.66	57.34
60	39.75	80.07	117.51

Please refer to the IBM Long-Term Care Insurance Program Appendix for a complete list of premium amounts.

Your premium contribution will not be increased because of age, illness, or how often you receive benefits, nor can coverage be cancelled for these reasons. However, the cost of this coverage may be adjusted based on overall

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program experience over a period of years, in which case the premium will be adjusted for everyone in the same class or group

Employees and individuals on the IBM Medical Disability Income Plan may elect to have their premiums (and their spouse's or domestic partner's premiums) deducted from their paycheck or disability income payment via monthly payroll deduction, or be billed directly. All other covered individuals will be billed directly by John Hancock.

**Premium Reimbursement:** You may receive financial assistance for up to 20 percent of your IBM Long-Term Care Insurance Program premiums under the provisions of the Life Planning Account. This assistance is being offered to encourage participation in the program but is not intended to pay the full cost. The level of reimbursement is subject to periodic review.

## **Inflation Adjustment**

The Plan offers an inflation adjustment feature. Every three years the costs for nursing home and other eligible services will be reviewed. If the costs increase due to inflation, you may be offered the opportunity to increase your maximum daily amount. The additional cost for the increase will be based on your age at the time of the new offering. You may choose to accept the increased level of coverage as long as you have not incurred charges for which benefits are payable within six months prior to the date of the offer and your attained age is less than 85 on the date of the offer.

## **Qualifying for Benefits**

You will qualify for benefits if you are certified as being unable to perform independently at least two of the following five Activities of Daily Living (ADL):

- Bathing or dressing
- Eating
- Toileting
- Transferring from bed to chair
- Maintaining continence

and you have completed the waiting period as defined below and are incurring covered expenses for nursing home care, home health care or adult day care. You do not need to have been hospitalized or to have undergone medical treatment to qualify for benefits under this program.

**Pre-existing condition:** You will need to satisfy a waiting period of six months from your effective date of coverage if you have a pre-existing condition. This is a condition for which medical advice or treatment was recommended or received during the six months prior to your effective date of coverage. You must satisfy this waiting period, if applicable, before you may be certified for benefits.

## **Receiving Benefits**

Benefit payments begin after a waiting period of 120 days from certification of your Activities of Daily Living (ADL) dependency during which you have continuously incurred expenses for covered services. The waiting period begins on the date you are certified for benefits and incur a covered expense for nursing home care, home health care or adult day care.

After you have completed the waiting period, and as long as you are incurring covered expenses for nursing home care, home health care or adult day care, your premium will be waived. Premium payments will resume only when you do not incur covered expenses for nursing home care, home health care or adult day care during a calendar month.

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See How to File a Claim for other information on receiving benefits payments under the program

## **Loss of Eligibility**

If an event occurs that makes you ineligible to participate under the policy—for example, the spouse of a retiree purchases coverage and is later divorced—you may maintain your coverage, although not necessarily at the same premium. Further information about continuation and conversion options will be sent to you once you are enrolled in the program.

## **Nonforfeiture Provision**

If you have paid premiums for 10 consecutive years and you discontinue premium payments, you will retain coverage of 30 percent of your original Daily Maximum Benefit (Calculation of consecutive years does not include periods of premium waiver). For each year beyond the 10th year that you continue to pay premiums, the amount of your reduced coverage will increase by 3 percent, up to a maximum reduced coverage of 75 percent of your Daily Maximum Benefit.

**Note:** The nonforfeiture provision may be changed or deleted to satisfy requirements of state insurance departments.

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## **How to File a Claim**

**Certification of Activities of Daily Living (ADL) Dependency:** If you believe you may qualify to receive benefits under this program, you should contact John Hancock immediately by calling 1-800-255-8991 (TTY: 1-800-255-1808). You will be asked to complete a Certification of Need Form, which allows a John Hancock case manager to assess your level of ADL dependency. If you are determined to be dependent in two ADLs, your Date of Certification will be established.

**Completing the Waiting Period:** The waiting period is completed after you have been credited for 120 days of covered services, beginning no sooner than your Date of Certification as established above. Incurring an expense for a covered service other than respite care on at least one day out of a calendar week credits you for seven days toward the 120 day waiting period. If the waiting period is not completed within 18 months after the date it begins, then a new waiting period will begin and must be completed before benefits are payable.

**Filing for Benefits Payments:** Toward the end of your waiting period, John Hancock will notify you as to the date you can begin receiving benefits payments. A supply of claims forms will be sent to you. Benefits can either be paid to the insured person or to the covered provider of service.

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## **Rights if Your Claim is Denied**

If your claim for benefits under the policy is denied in whole or in part, you or your authorized representative will receive a written notice giving the reason for the denial. You will then be entitled to a review of that claim denial if (1) you make a written request for such review; and (2) you send such request to John Hancock within 60 days after receipt of the denial. When requesting a review, please state the reasons you believe the claim was improperly denied and submit any data, questions or comments you deem appropriate.

John Hancock will then review and make a final decision with respect to the claim appeal for benefits under the policy. This decision will be in writing, and, if a denial, will include specific reasons for the denial. The decision will be made promptly, and usually not later than 60 days after John Hancock receives the request for review.

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## ERISA Information

<b>Name of the Plan</b>	The IBM Long-Term Care Insurance Program
<b>Name and Address of Employer Maintaining the Plan</b>	IBM Corporation New Orchard Road Armonk, NY 10504
<b>Employer Identification Number</b>	13-0871985
<b>Plan Number</b>	526
<b>Type of Plan</b>	Employee Welfare Plan including: Long-Term Care Benefits
<b>Claims Administrator and ERISA Claim Reviewer</b>	John Hancock Life Insurance Company Group Long-Term Care Division 197 Clarendon Street P.O. Box 111, C-7 Boston, MA 02117-0707
<b>Plan Administrator's Business Address and Telephone Number</b>	Office of the Plan Administrator IBM Human Resources Service Center 3808 Six Forks Road Raleigh, NC 27609  Telephone: (919) 301-6685

## Agent for Service of Legal Process

Service of legal process in disputes arising under the provisions of the insurance contract may be made upon John Hancock Life Insurance Company, Attention: Group Long-Term Care Division, 197 Clarendon Street, Boston, Massachusetts 02117. For disputes arising under the Plan, legal process may be directed to the Plan Administrator at the Plan Administrator's address in the previous table.

## Fiduciaries

With respect to benefits under the Plan, the named fiduciaries of the Plan, within the meaning of Section 402(a) of ERISA, with authority to control and manage the operation of the Plan, are as follows:

Named Fiduciary	Area of Fiduciary Responsibility
John Hancock	Provision of full and fair review of claim denials pursuant to Section 503 of ERISA
Plan Administrator	All other areas not included above

Each named fiduciary may appoint a person or persons other than a named fiduciary to carry out the fiduciary responsibilities of the named fiduciary under the Plan.

The fiduciary responsibilities of the named fiduciaries shall be exercisable severally and not jointly, and each named fiduciary's responsibilities will be limited to the specific areas indicated for such named fiduciary.

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## **Discretionary Authority of Plan Administrator and other Plan Fiduciaries**

In carrying out their respective responsibilities under the Plan, the Plan Administrator and other Plan fiduciaries shall have discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan. Any interpretation or determination made pursuant to such discretionary authority shall be given full force and effect, unless it can be shown that the interpretation or determination was arbitrary and capricious.

## **Plan Year**

The Plan's fiscal records are kept on a policy year beginning each January 1st and ending on the following December 31st.

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## **Customer Service**

| You may obtain additional information from John Hancock by calling 1-800-255-8991 (TTY: 1-800-255-1808). A  
| complete enrollment kit including a brochure and enrollment forms is available from John Hancock or on-line  
| through the IBM HR Web site

This is only a summary of the IBM Long-Term Care Insurance Program and does not cover all the details. A complete statement of the governing terms and conditions of your insurance coverage can be found in the group insurance certificate that will be issued to you if you become insured

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## IBM Long-Term Care Insurance Program Appendix

### Inflation-Adjusted Monthly Premiums

Issue Age*	Your monthly premium will be:**		
	Option 1 (\$65)	Option 2 (\$135)	Option 3 (\$200)
20 and under	2.37	4.05	5.61
21	2.70	4.38	5.94
22	2.81	4.77	6.59
23	3.20	5.30	7.25
24	3.54	5.92	8.13
25	3.97	6.63	9.10
26	4.32	7.40	10.26
27	4.77	8.27	11.52
28	5.29	9.21	12.85
29	5.88	10.22	14.25
30	6.45	11.35	15.90
31	7.05	12.51	17.58
32	7.68	13.70	19.29
33	8.34	14.92	21.03
34	8.97	16.25	23.01
35	9.65	17.49	24.77
36	10.30	18.84	26.77
37	11.10	19.92	28.11
38	11.75	21.13	29.84
39	12.38	22.32	31.55
40	13.01	23.51	33.26
41	13.89	25.23	35.76
42	14.65	26.83	38.14
43	15.37	28.25	40.21
44	16.09	29.67	42.28
45	16.75	31.17	44.56
46	17.45	32.57	46.61
47	18.15	34.11	48.93
48	18.89	35.83	51.56
49	19.71	37.63	54.27
50	20.62	39.66	57.34
51	21.65	41.81	60.53
52	22.80	44.36	64.38
53	24.12	47.22	68.67
54	25.63	50.55	73.69
55	27.35	54.09	78.92
56	29.27	58.25	85.16
57	31.45	62.81	91.93
58	33.94	67.96	99.55
59	36.71	73.67	107.99
60	39.75	80.07	117.51
61	43.21	87.03	127.72
62	47.00	94.74	139.07
63	51.11	103.19	151.55
64	55.75	112.45	165.10
65	60.69	122.57	180.03

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Issue Age*	Your monthly premium will be:**		
	Option 1 (\$65)	Option 2 (\$135)	Option 3 (\$200)
66	66.15	133.49	196.02
67	72.09	145.45	213.57
68	80.08	161.98	238.03
69	88.02	178.46	262.44
70	95.94	194.92	286.83
71	103.83	211.21	310.92
72	111.74	227.66	335.30
73	120.78	246.36	362.97
74	132.06	269.54	397.20
75	145.27	297.03	437.95
76	160.45	328.45	484.45
77	177.42	363.48	536.25
78	190.07	389.71	575.09
79	202.58	415.66	613.52
80	215.02	441.26	651.34
81	227.19	466.59	688.89
82	239.28	491.56	725.82
83	251.25	516.27	762.36
84	263.06	540.68	798.47
85	274.70	564.78	834.14
86	286.17	588.57	869.37
87	297.55	612.13	904.24
88	308.82	635.30	938.46
89	319.87	658.25	972.46
90	330.86	680.86	1,005.86
91	341.66	703.28	1,039.07
92	352.33	725.29	1,071.61
93	362.87	747.03	1,103.75
94	373.29	768.51	1,135.50
95+	393.72	810.64	1,197.78

\*Your issue age is your age on your birthday closest to the date John Hancock receives your application.

\*\*Slightly higher rates may apply in some states because of requirements imposed by those particular states. Contact John Hancock for further information.

# Employee Retirement Income Security Act

## ERISA Requirements

On September 2, 1974, the Employee Retirement Income Security Act of 1974 (often referred to as ERISA) was enacted, establishing federal controls over most employee pension and welfare benefit plans. The plans covered in this book which are governed by ERISA have been established by IBM Corporation, Armonk, NY, Employer Identification Number 13-0871985. The Plan Administrator is the Manager of Compensation and Benefits Services, Global Human Resources. The address for the Plan Administrator is: Office of the Plan Administrator, IBM Human Resources Service Center, 3808 Six Forks Road, Raleigh, NC, 27609; telephone (919) 301-6685. Service of legal process may be made upon the Plan Administrator.

The records of all of the plans covered in this book which are governed by ERISA are kept on a calendar year basis, beginning January 1st and ending December 31st of each year, which is in each case, the plan year.

As a participant in the plans covered in this book which are governed by ERISA, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites, all plan documents, including insurance contracts and copies of all documents filed by the plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.

Obtain copies of all plan documents and other plan information upon written request to the Plan Administrator. The Plan Administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report for plans that are required to have such report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the plans covered in this book which are governed by ERISA. The people who operate your plans, called "fiduciaries" of the plans, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA.

If your claim for a welfare benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the plan review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about your plan, you should contact the Plan Administrator. If you have any questions about this statement or your rights under ERISA, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical

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Assistance and Inquiries, Pension and Welfare Benefit Administration, U S. Department of Labor, 200 Constitution Avenue N W, Washington, D C. 20210

It is anticipated that most questions can be answered by the IBM Human Resources Center at 1-800-796-9876 (TTY: 1-800-426-6537)

ERISA provisions require that all employees have the following information:

**Table 1. ERISA Information**

Plan Name and Number	IBM Long-Term Care Insurance Program (526)	IBM Long-Term Disability Plan (525)	IBM Medical Disability Income Plan (506) IBM Regular Part-time Employee Medical Disability Income Plan (515)
<b>Plan Type</b>	Long-term care	Long-term disability	Long-term disability
<b>Administration</b>	Contract administration insurer	Insurance policy and contract administration	Plan Administrator
<b>Funding</b>	IBM financial assistance for employee premiums	Insurance premium and claim experience and administrative fee	IBM contribution based on actuarial determination or payment from operating funds
<b>Plan Trustee(s), Insurer(s) and/or Administrators</b>	John Hancock Life Ins. Co. Group Long-Term Care Division 197 Clarendon Street P.O. Box 111, C-7 Boston, MA 02117-0707	Metropolitan Life Insurance Co. P.O. Box 3017 Utica NY 13504	Chase Manhattan Bank 4 Chase Metrotech Center Brooklyn, NY 11245
<b>Payment of Claims</b>	John Hancock Life Ins. Co	Metropolitan Life Insurance Company	IBM Corporation

**Table 2. ERISA Information**

Plan Name and Number	IBM Group Life Insurance and Survivors Income (501) IBM Regular Part-Time Employee Group Life Insurance and Survivor's Income Benefit Plan (510)	IBM Travel Accident Insurance Plan for Regular and Regular Part-Time Employees (507)
Plan Type	Life Insurance and Survivors Benefit	Accidental death and dismemberment
Administration	Insurance policy plus direct payment by IBM to eligible survivors	Insurance policy
Funding	Insurance premium based on claim experience and SIB payment from general assets of IBM	Insurance premium
Plan Trustee(s), Insurer(s) and/or Administrators	IBM Corporation and Prudential Ins Co of America 56 North Livingston Avenue Livingston NJ 07038	Insurance Co. of North America 195 Broadway 11th Floor New York, NY 10007
Payment of Claims	IBM Corporation and Prudential Ins Co of America	Insurance Co. of North America

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## Changes to IBM Benefit Plans

IBM's benefit plans may be amended by written resolution of the Board of Directors or any Committee to which the Board has delegated power. The Retirement Plans Committee is authorized to amend any Plan which is funded through a trust, including the IBM Medical Disability Income Plan. All other benefit plans may be amended by the IBM chief human resources officer or other IBM executive by means of a written instrument, such as the text of a plan, a summary plan description, a trust agreement, an insurance contract or insurance certificate, an administrative services contract, the administrative documents and procedures for a plan, an electronic medium notice, a hard copy bulletin board notice, or an announcement letter or written materials that are approved by said chief human resources officer or other IBM executive and maintained with the records of the affected benefit plan.

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## Claim Review Procedure

If an application for plan benefits is denied in whole or in part, written notice of the denial will be made to the claimant within a reasonable period of time after receipt of the claim. The notice of denial will include specific reasons for the denial with reference to the section of the plan on which denial is based, a description of any additional information necessary to resubmit the claim and an explanation of the claim review procedure. Within 60 days after receiving the denial, a claimant may request a review of the claim by writing to the Plan Administrator. A prompt review will be made after a request is received. A written decision on the review will normally be furnished within 60 days after the appeal is received. (Where special circumstances require an exception, the Plan Administrator will provide written notice within the 60 days that the decision will be furnished as soon as possible, but not more than 120 days after the appeal was received.) The second notice will include the reasons for the decision with specific reference to pertinent plan provisions upon which the decision is based.

In connection with any request for a claim review of a denial of a benefit claim in which the beneficiary's medical condition is an issue or coverage was not pre-certified, IBM may require the patient to be examined by a physician(s) selected by IBM.

IBM

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Printed in U S A

**MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

Three Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102-4079  
973-622-7711  
Attorneys for Defendants,  
Metropolitan Life Insurance Company,  
improperly pleaded as "MetLife Disability Ins. Co.,"  
and International Business Machines Corporation,  
improperly pleaded as "IBM Corp."

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

BARBARA D. O'DONNELL,	:	
Plaintiff,	:	Civil Action No. 08-cv-1117(CLB)(GAY)
v.	:	
METLIFE DISABILITY INS. CO. and	:	
IBM CORP.	:	
Defendants.	:	

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**CIVIL ACTION – ORDER**

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THIS MATTER having been opened to the Court upon the application of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for defendants, Metropolitan Life Insurance Company, erroneously pleaded as "MetLife Disability Ins. Co." (hereinafter "MetLife") and International Business Machines Corporation, erroneously pleaded as "IBM Corp.," (hereinafter "IBM") (collectively referred to as "Defendants"), for an order dismissing plaintiff Barbara O'Donnell's ("O'Donnell") Complaint, pursuant to the terms and provisions of Federal Rule of Civil Procedure 12(b)(6), and upon notice to O'Donnell, and the Court having reviewed and

considered all moving and opposing papers, having heard argument of counsel, and finding good cause existing for the entry of the within order;

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2008;

**ORDERED** that the Complaint filed on by plaintiff Barbara O'Donnell be, and hereby is, dismissed with prejudice based upon the expiration of the applicable period of limitations and/or the expiration of the statute of limitations set forth in C.P.L.R. § 213.

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Honorable Charles L. Brieant, U.S.D.J.

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**McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**

Three Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102-4079  
973-622-7711  
Attorneys for Defendants,  
Metropolitan Life Insurance Company,  
improperly pleaded as "MetLife Disability Ins. Co.,"  
and International Business Machines Corporation,  
improperly pleaded as "IBM Corp."

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

BARBARA D. O'DONNELL,	:	
Plaintiff,	:	Civil Action No. 08-cv-1117(CLB)(GAY)
v.	:	
METLIFE DISABILITY INS. CO. and	:	
IBM CORP.	:	
Defendants.	:	

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**CIVIL ACTION – CERTIFICATION OF SERVICE**

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I, Kimberlee A. Sandy, am employed by the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for defendants, Metropolitan Life Insurance Company, improperly pleaded as "MetLife Disability Ins. Co.," and International Business Machines Corporation, improperly pleaded as "IBM Corp." in the within matter.

On June 16, 2008, I served true and accurate copies of the within Notice of Motion, Certification of Counsel, Legal memorandum, proposed Order and this certification of service upon the following, in accordance with the Federal Rules of Civil Procedure and the electronic

filings of the United States District Court, District of New Jersey:

Barbara D. O'Donnell  
75 Main Street  
Otisville, New York 10983

With a courtesy copy to:

Honorable Charles L. Brieant, U.S.D.J.  
United States Courthouse  
300 Quarropas St., Room 275  
White Plains, NY 10601

**I HEREBY CERTIFY** that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Kimberlee A. Sandy  
Kimberlee A. Sandy

Date: June 16, 2008  
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